

IN THE SUPERIOR COURT OF RICHMOND COUNTY

STATE OF GEORGIA

EDWARD H. PATRICK)
v.)
Plaintiff,)
v.)
PAIN COLLEGE and)
GEORGE C. BRADLEY)
Defendants.)

Civil Action No.

2014-RCCV-433

JAMES G. BLANCHARD, JR.

COMPLAINT FOR DAMAGES

COMES NOW, the Plaintiff, EDWARD H. PATRICK, and files this COMPLAINT FOR DAMAGES, stating as follows:

The Parties

1.

The Plaintiff, EDWARD H. PATRICK, is an individual currently residing in Cobb County, Georgia.

2.

PAIN COLLEGE is an institution of higher education located in Augusta, Georgia. It can be served with process at its principal place of business located at 1235 Fifteenth Street, Augusta, GA 30901.

3.

GEORGE C. BRADLEY is an individual who is the current president of PAIN COLLEGE. He can be served with process at 1235 Fifteenth Street, 3rd Floor, Augusta, GA 30901.

Jurisdiction and Venue

4.

Jurisdiction is proper in this court as this is a breach of contract matter.

5.

Venue is proper in this court as one or more of the Defendants, for purposes of venue, is a resident of Richmond County pursuant to GA Const. Article VI, Section II, Para. IV and VI.

Factual Background

6.

On or about July 15, 2013, Plaintiff entered into an employment agreement with Defendant, GEORGE C. BRADLEY, and Defendant PAINE COLLEGE for employment at PAINE COLLEGE as Vice President for Administration and Fiscal Affairs. (See Exhibit "1").

7.

Said agreement provided for an annual salary of \$135,000 for a fixed term of three years, beginning July 15, 2013 and ending July 14, 2016.

8.

Terms of the agreement provided that in the event of termination, the balance of the remaining contract period would be paid in monthly installments until the balance was paid in full.

9.

Terms of the agreement also provided for ancillary benefits to be provided during the term of the agreement, such as: (1) use and possession of a three-bedroom campus house at no cost, including all utilities and maintenance; (2) a \$6,000 annual housing allowance in lieu of

campus housing; (3) three daily meals for Plaintiff and his immediate family; (4) payment of tuition and fees towards a doctoral degree at certain specified institutions of higher education; (5) use of a vehicle with maintenance costs and reimbursement for gas and trips related to Paine College business; and, (6) 25 days of paid leave for consulting work at other educational institutions.

10.

On or about March 17, 2014, Plaintiff was notified that his employment was being terminated. (See Exhibit "2").

11.

The termination letter stated that the reasons for termination were: (a) failure to follow the high moral and ethical standards commonly expected of the chief financial officer of the institution; and, (b) that the Plaintiff was not pursuing the lawful objectives assigned to the Office of Administration and Fiscal Affairs. (See Exhibit "2").

12.

No substantive facts were indicated to show how the Plaintiff failed to follow the high moral and ethical standards commonly expected of the chief financial officer of the institution or to show that the Plaintiff was not pursuing the lawful objectives of his office. The reasons given for termination were purely pretextual and devoid of substance.

13.

The Georgia Department of Labor rejected the proffered reasons for termination for purposes of determining Plaintiff's eligibility for unemployment benefits stating that the Plaintiff

was performing the duties to which he was hired and that he did not fail to follow the employer's rules, orders or instructions. (See Exhibit "3").

14.

On March 18, 2014 Defendants sent to the Plaintiff, via hand delivery, a letter demanding, *inter alia*, that the Plaintiff vacate the on-campus housing he was then occupying and relinquish possession of the property within six (6) days, by March 24, 2014. (See Exhibit "4").

15.

At significant financial cost and mental hardship, to himself and his two minor children, ages 11 and 12, the Plaintiff reluctantly and hurriedly vacated the premises within the time allotted in order to avoid forcible eviction from the home and further mental pain and anguish.

COUNT I

BREACH OF CONTRACT

16.

Plaintiff hereby incorporates by reference paragraphs 1 - 15, as if stated fully herein.

17.

The termination of the Plaintiff's employment agreement was without just cause under the terms of the contract and constituted a breach of the employment agreement. Consequently, the Plaintiff is entitled to compensatory and general damages in an amount to be proven at trial.

COUNT II

WRONGFUL EVICTION AND TRESPASS

18.

Plaintiff hereby incorporates by reference paragraphs 1 - 17, as if stated fully herein.

19.

By virtue of the employment agreement, a relationship of landlord and tenant was created between Defendant, PAIN COLLEGE, and the Plaintiff, pursuant to O.C.G.A. §44-7-1.

20.

The exclusive method whereby a landlord may evict a tenant is through a properly instituted dispossessory action filed pursuant to O.C.G.A. §44-7-49 et seq.

21.

Even if the Defendant, PAIN COLLEGE, had the right to demand possession of the premises, which the Plaintiff denies, Plaintiff was entitled to sixty (60) days notice of the termination of the tenancy, pursuant to O.C.G.A. §44-7-7.

22.

Where a landlord evicts a tenant without filing a dispossessory action and obtaining a writ of possession, or without following the proper dispossessory procedures, including notice of the termination of the tenancy, the landlord is liable in tort for wrongful eviction and trespass.

23.

The unlawful termination of the possessory rights of the Plaintiff to on-campus housing, pursuant to the employment agreement, entitles the Plaintiff to compensatory and general damages in an amount to be proven at trial.

COUNT THREE

PUNITIVE DAMAGES

24.

Plaintiff hereby incorporates by reference paragraphs 1 - 23, as if stated fully herein.

25.

The true reason for Plaintiff's termination indicates that he was terminated for truthfully, professionally, and ethically responding to inquiries put to him by the Southern Association of Colleges and Schools ("SACS") evaluation team on March 14, 2014, just days before he was terminated for doing so.

26.

Defendant, GEORGE C. BRADLEY'S termination of Plaintiff's employment and subsequent eviction of Plaintiff, and his two minor children, from on-campus housing with only 6 days' notice, evidences that degree of willful misconduct, malice, fraud, wantonness, oppression, and the entire want of care which would raise the presumption of conscious indifference to the consequences so as to entitle the Plaintiff to exemplary damages.

27.

Defendant, GEORGE C. BRADLEY, has a historical pattern and practice of abusive employment practices toward Paine College employees, having summarily and without cause dismissed three (3) prior chief financial officers of the college prior to the Plaintiff. Unless his abusive and tyrannical behavior is punished, penalized and deterred, it will likely continue into the future.

COUNT FOUR

ATTORNEY'S FEES AND EXPENSES OF LITIGATION

28.

Plaintiff hereby incorporates by reference paragraphs 1 - 27, as if stated fully herein.

29.

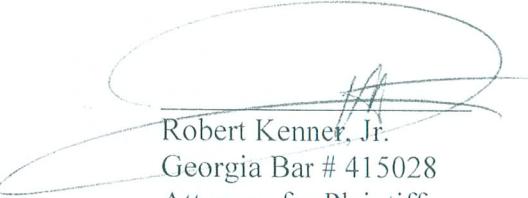
The behavior of the Defendants in breaching the employment agreement, without cause, and unlawfully evicting the Plaintiff from on-campus housing, with only 6 days' notice, evinces bad faith, and stubborn litigiousness, which has caused the Plaintiff unnecessary trouble and expense to the extent that the Plaintiff is entitled to his attorney's fees, and costs and expenses of litigation under O.C.G.A. §13-6-11.

WHEREFORE, the Plaintiff prays that:

- a) Service of process be effectuated as provided by law;
- b) The Plaintiff have and recover from the Defendants general and compensatory damages for breach of his employment agreement;
- c) The Plaintiff have and recover from the Defendants general and compensatory damages for their tortious conduct of wrongful eviction and trespass;
- d) The Plaintiff have and recover punitive, or exemplary damages, for their willful misconduct, malice, fraud, wantonness, oppression, and the entire want of care which would raise the presumption of conscious indifference to the consequences in evicting the Plaintiff, and his two minor children, from on-campus housing with only 6 days' notice;

- e) The Plaintiff have and recover his attorney's fees and expenses of litigation pursuant to O.C.G.A. §13-6-11 against the Defendants for their bad faith, and stubborn litigiousness, which has caused the Plaintiff unnecessary trouble and expense;
- f) The Plaintiff recovers all other necessary and proper relief that this court deems the Plaintiff is entitled to.

Respectfully submitted,



Robert Kenner, Jr.
Georgia Bar # 415028
Attorney for Plaintiff

The Barrister Building
3992 Redan Road
Stone Mountain, Georgia 30083
404-292-9997 Office
404-292-9998 Facsimile



July 1, 2013

Dear Mr. Patrick:

I am pleased to offer you employment at Paine College as *Vice President for Administration and Fiscal Affairs* effective July 15, 2013 at an annual salary of \$135,000.00 payable in equal monthly installments.

Additional terms of this employment agreement include:

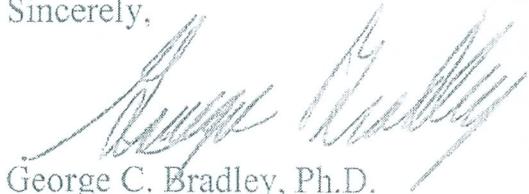
1. Paine College agrees to provide at no cost to Mr. Patrick a three-bedroom campus house and all utilities included. Utilities include electricity, gas, water, garbage collection, telephone, cable television and internet access. Routine maintenance including but not limited to plumbing, appliance upkeep, roofing and electrical components will be paid by Paine College.
2. When Mr. Patrick moves from the three bedroom campus home, Paine College agrees to provide him with a \$6,000 annual housing allowance payable in equal monthly installments effective the first month of his move.
3. Paine College will provide at no cost to Mr. Patrick and his immediate family three daily meals, breakfast, lunch and dinner.
4. Paine College will pay for tuition and fees towards a doctoral degree in a field related to the responsibilities of a chief financial officer for an institution of higher education when payment is due. The degree program must be at a regionally accredited institution and may include, but are not limited to Mercer University, Emory University, University of South Carolina, Georgia State University or University of Georgia. Online PhD programs are not acceptable under the terms of this agreement.
5. Mr. Patrick will be provided with a vehicle for his use. Mr. Patrick will be reimbursed for gas for trips related to Paine College business. Repairs and maintenance costs will be provided at no cost to Mr. Patrick.
6. Mr. Patrick will be provided twenty-five paid days annually to perform consulting work at other educational institutions.
7. **This is a three year fixed contract agreement period, beginning July 15, 2013 and ending July 14, 2016.** In the event of termination, Paine College agrees to pay the balance of the remaining contract period in monthly installments until the full balance is paid.
8. Relocation costs will be reimbursed by Paine College up to \$2,000.
9. All parts of this contract become null and void if Mr. Patrick:
 - a. resigns from the position of Vice President of Administration and Fiscal Affairs;
 - b. is charged and convicted of a material or admitted dishonest act ;
 - c. is found by the President to have failed to follow the high moral and ethical standards commonly expected of the chief financial officer of the institution; or
 - d. has been determined not to be pursuing the lawful objectives of all matters assigned to the Office of Administration and Fiscal Affairs.

Duties and responsibilities will be determined by the President who will serve as your immediate supervisor. In addition to routine staff and administrative responsibilities, you are expected to assume a responsible share of all educational matters of the College. The duties and responsibilities of staff members are outlined in the **Paine College Policy Manual 2010**.

Please indicate your acceptance of this offer by signing this document below and returning it to my office.

I look forward to our colleagueship.

Sincerely,



George C. Bradley, Ph.D.
President

GCB:jdh

Cc: Human Resources

I accept the terms of the offer as set forth herein.


Signature

7-15-2013
Date

Mr. Edward H. Patrick
5606 Brookstone Drive
Acworth, GA 30101

**HAND-DELIVERED**

March 17, 2014

Mr. Edward Patrick
Vice President for Administrative & Fiscal Affairs
Paine College
1235 15th Street
Augusta, GA 30904

RE: Separation from Employment – Opportunity to Resign

Dear Mr. Patrick:

This letter serves as formal notification of the intent to terminate your employment from the position of Vice President for Administrative & Fiscal Affairs at Paine College, effective March 17, 2014.

At this point, I have concluded that you are in violation of paragraph 9 subsections (c) & (d) of your employment agreement. Consequently, I am prepared to offer you the opportunity to resign from your position and to provide you with three months of separation pay, if you agree to waive your right to pursue legal action regarding your separation from employment.

As stated in the attached Waiver and General Release, you will be allowed to continue to remain in your campus residence, located on Beman Street, Augusta, Georgia 30904 until April 10, 2014, under the following conditions:

1. You sign and return the Waiver and General Release Agreement to my office by close of business on March 19, 2014;
2. You refrain from talking to, or otherwise engaging any Paine College students, faculty or staff;
3. You conduct yourself in a professional manner at all times while remaining in the campus residence;

You are hereby directed to provide Chief Joseph Nelson, in the Office of Campus Police, your office and building keys, college credit cards, and any other college property in your possession immediately. If you decide not to execute the Waiver Agreement and General Release, this letter serves as notification of the termination of your employment, effective March 17, 2014. You will be required to vacate your campus residence on or before March 24, 2014.

1235 Fifteenth Street
Augusta, GA 30904
912.231.5740, office
912.231.5744, fax

WWW.PAINE.EDU

A College of The United Methodist Church and the Christian Methodist Episcopal Church

EXHIBIT "2"

Edward Patrick Termination Letter

March 17, 2014

Page – 2

Please let me know if you have any questions or concerns. Thank you for your service to Paine College, and I wish you the best in your future endeavors.

Sincerely,



Dr. George C. Bradley

President

Attachment: Waiver Agreement and General Release

cc: Human Resources
Chief Nelson, Campus Police

GEORGIA DEPARTMENT OF LABOR
CLAIMS EXAMINER'S DETERMINATION

SSN *****-4415
 BYB 03/29/14
 CWB 03/23/14

CAREER CENTER
 4200
 AUGUSTA
 601 GREENE STREET
 AUGUSTA, GEORGIA 30901
 FAX # (706) 721-7680

7000

CLAIMANT EDWARD H PATRICK 2123 HOLT STREET AUGUSTA GA 30904	EMPLOYER PAINE COLLEGE 1235 15TH ST AUGUSTA GA 30901
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SECTION I - CLAIM DETERMINATION

Benefits are allowed as of 03/23/14.

SECTION II - LEGAL BASIS FOR DETERMINATION

Section 34-8-194 (2) (A) of the Employment Security Law says that you cannot be paid unemployment benefits if you were fired from your most recent employer for not following your employer's rules or orders. In addition, you may not be paid unemployment benefits if you were fired for failing to perform the duties for which you were hired, if that failure was within your control. You also cannot be paid benefits if you were suspended for any of these same reasons. The law says that your employer has to show that discharge or suspension was for a reason that would not allow you to be paid unemployment benefits. If you cannot be paid unemployment benefits under this section of the law, you may qualify at a later time. To do this, you must find other work and earn wages covered under unemployment law. The covered wages must be at least ten times the weekly amount of your claim. If you then become unemployed through no fault of your own, you may reapply for unemployment benefits.

SECTION III - REASONING

Your employer fired you for failing to follow the high moral and ethical standards commonly expected of the chief financial officer. The available facts show that you were performing the duties for which you were hired. The facts show that you did not fail to follow employer's rules, orders or instructions. Therefore, you can be paid benefits.

SECTION IV - ACCOUNT CHARGEABILITY

NOTICE TO EMPLOYER:

EXHIBIT 3

SECTION V - APPEAL RIGHTS

NOTE: This determination will become final unless you file an appeal on or before 05/01/14. If you file an appeal you must continue to report on your claim as instructed, or you will not be paid if you win your appeal. You will be required to repay the benefits received during the disqualification period, if a determination allowing benefits is reversed by an appeal decision. Refer to the Claimant Handbook booklet or contact an office of the Georgia Department of Labor for more details.

EXPLANATION TO CLAIMANT

NM2007

WARNING: It is a crime under Paragraph (a) of OCGA Section 34-8-256 of the Employment Security Law to make any false statement or to fail to disclose any material fact in connection with an unemployment insurance claim. VIOLATORS WILL BE PROSECUTED.

UNEMPLOYMENT INSURANCE IS FINANCED WHOLLY BY AN EMPLOYER PAYROLL TAX; no part is paid by the worker. Payments can be made only to those who meet all legal requirements.

TO FILE A CLAIM you must be either (a)totally or partially unemployed or (b)working part-time due to lack of work, and earning wages which total not more than your unemployment insurance weekly amount plus \$50.00.

YOUR UNEMPLOYMENT INSURANCE WILL LAST LONGER if you work all you can. You may receive partial payments if you work and earn not more than your weekly amount plus \$50.00. ALL YOUR EARNINGS DURING YOUR CLAIM WEEK MUST BE REPORTED WHETHER OR NOT YOU HAVE BEEN PAID.

YOU MAY CLAIM PARTIAL UNEMPLOYMENT INSURANCE if you are employed on a full-time job with a regular employer and, because of lack of work only, work less than full time during your work week and earn not more than your unemployment insurance weekly amount plus \$50.00. See your employer or contact the Georgia Department of Labor Career Center.

TO BE PAID UNEMPLOYMENT INSURANCE after establishing your claim, the law requires that you: (a)be unemployed, either totally or partially; (b)report for each week claimed; (c) be able and available for work and be actively seeking work; (d) be willing to accept suitable work as determined by the Department of Labor; (e) not be subject to disqualification.

ALSO, you must have returned to work and have earned insured wages equal to at least 10 times the weekly amount of your claim since (a)establishing a previous claim; (b)voluntarily quitting your most recent job WITHOUT GOOD CAUSE CONNECTED WITH YOUR WORK even though you have good personal cause; (c)failing , WITHOUT GOOD CAUSE, either to apply for or accept available, suitable work; (d)DISCHARGE OR SUSPENSION for failure to obey orders, rules, or instructions, or for failure to discharge the duties for which employed.

OR, you must have returned to work and have earned insured wages equal to at least 12 times the weekly amount of your claim since DISCHARGE OR SUSPENSION for intentional conduct involving theft of property, goods, or money valued at \$100.00 or less, or intentional conduct on the premises of the employer or while on the job, which results in a physical assault upon or bodily injury to the employer, fellow employees, customers, patients, bystanders, or the eventual consumer of products.

OR, you must have returned to work and have earned insured wages equal to at least 16 times the weekly amount of your claim since DISCHARGE OR SUSPENSION for intentional conduct involving property loss or damages amounting to \$2,000.00 or more; for theft of property, goods, or money valued at over \$100.00; or for sabotage or embezzlement.

YOU CANNOT BE PAID UNEMPLOYMENT INSURANCE for any week in which you are (a)on vacation or leave of absence at your own request; (b)receiving wages in lieu of notice, vacation pay or Worker's Compensation for temporary total or temporary partial disability; or (c)out of work due to a labor dispute.

OCGA Section 34-8-122

PRIVILEGED STATUS OF LETTERS, REPORTS, ETC., RELATING TO ADMINISTRATION OF CHAPTER - "All letters, reports, communications, or any other matters, either oral or written, from the employer or employee to each other or to the Department of Labor or any of its agents, representatives or employees, which letters, reports, or other communications shall have been written, sent, delivered, or made in connection with the requirements of the administration of this chapter, shall be absolutely privileged and shall not be made the subject matter or basis for any action for slander or libel in any court of the State of Georgia."

If you have questions about your claim or don't receive checks, report to your Georgia Department of Labor Career Center. Delay could affect your future checks.

**HAND DELIVERED**

March 18, 2014

Mr. Edward Patrick
Vice President for Administrative & Fiscal Affairs
Paine College
1235 15th Street
Augusta, GA 30904

Re: Separation from Employment – Rejection of Counter-Offer

Dear Mr. Patrick:

As you are aware, Paine College has terminated your employment effective March 17, 2014. In conjunction with the School's decision to terminate your employment, you were given the opportunity to resign, and offered a severance package to aid in the transition. On March 18 2014, you responded with a counter-offer, which requested, among other things, one lump sum payment of \$36,000 payable on or before March 21, 2014. This letter serves as formal notice of Paine College's rejection of your counter-offer.

Furthermore, because your counter-offer serves as a rejection of the severance package previously offered to you, you will be required to vacate your campus residence on or before March 24, 2014. To the extent you have not done so already, you are to provide Chief Joseph Nelson your office and building keys, college credit cards, and other college property in your possession.

If you have any questions regarding your insurance, please contact Mrs. Jannette H. Davenport at 706-821-8636. Thank you for your service to Paine College, and I wish you the best in your future endeavors.

Sincerely,

A handwritten signature in cursive script that appears to read "George C. Bradley".

Dr. George C. Bradley
President

cc: Human Resources/Chief Nelson, Campus Police