STATE OF MICHIGAN

COURT OF CLAIMS

DAVID DANIELS,

Plaintiff,

v

UNIVERSITY OF MICHIGAN, UNIVERSITY OF MICHIGAN BOARD OF REGENTS, and GLORIA HAGE, DAVID GIER, MARTIN PHILBERT, and MARK SCHLISSEL, in their official capacities,

Defendants.
_____/

OPINION AND ORDER

Case No. 25-000033-MK

Hon. Brock A. Swartzle

Defendants, University of Michigan, University of Michigan Board of Regents, Gloria Hage, David Grier, Martin Philbert, and Mark Schlissel, request that this Court grant summary disposition in their favor under MCR 2.116(C)(6), (7), and (10). The Court finds summary disposition warranted under MCR 2.116(C)(7) because plaintiff failed to comply with the mandatory notice provisions of the Court of Claims Act, MCL 600.6401, *et seq*. (COCA). This finding necessitates dismissal of plaintiff's complaint and, therefore, the Court will not address defendants' arguments under MCR 2.116(C)(6) or (10).

I. BACKGROUND

Plaintiff, David Daniels, was hired as a tenure-track professor in the School of Music, Theatre, and Dance (SMTD) at the University of Michigan effective September 1, 2015. He received tenure on May 17, 2018. On March 26, 2020, his employment was terminated for

violation of the University's sexual harassment and faculty-student relations policy. Plaintiff denies that he violated this policy or engaged in a pattern of behavior toward any University of Michigan student that was harassing, abusive, or exploitative.

His verified complaint, filed on March 5, 2025, alleges (1) Breach of Contract, (2) Breach of Implied Contract, and (3) Sex Discrimination in violation of Michigan's Elliott-Larsen Civil Rights Act, MCL 37.2201, *et seq*. A notice of intent was filed on March 22, 2024. The named-defendants include the University and its Board of Regents; David Grier, then-dean of the SMTD; Gloria Hage, a senior associate general counsel for the University; Martin Philbert, a former provost; and Mark Schlissel, former president of the University and a tenured faculty member himself.

Plaintiff alleges that the named defendants decided to terminate his tenured employment, after receiving an e-mail on July 16, 2018 from an individual who accused him of being a "serial sexual predator and rapist" and made specific reference to an "alleged rape of 'young singer' in 2010" whom plaintiff claims was never affiliated with any defendant. The University's Office of Institutional Equity (OIE) began an investigation on August 9, 2018, allegedly without notifying plaintiff, by sending an e-mail to SMTD students. The e-mail did not name plaintiff or reference the July 16, 2018 e-mail, but stated that the OIE director would "like to schedule a time to speak with [students] by phone" to learn whether any students were aware of "any concerns of sexual harassment and/or unwelcome attention by faculty within the [SMTD]." Plaintiff claims that OIE received no response. This is the earliest alleged material breach of his employment contract identified in the complaint. Specifically, he believes the OIE director was merely "looking for damaging information" to be used against him, despite no official complaint having been made.

The second material breach of contract identified in the complaint allegedly occurred in January and April 2019, when defendants Grier and Philbert, respectively, made statements and authorized an exhibition at the SMTD that disparaged plaintiff before any notice of formal disciplinary proceedings.

On April 22, 2019, plaintiff received notice that the University was initiating dismissal proceedings against him under Regent's Bylaw 5.09 because he had allegedly engaged in a pattern of behavior that was harassing, abusive, and exploitive of the University's students—which plaintiff denies. A hearing occurred on November 11 and 14, 2019, and on December 18, 2019, the hearing committee recommended that plaintiff be dismissed.

Plaintiff claims that this decision violated the University's Standard Practice Guide (SPG) by imposing discipline in excess of that allowed in the SPG 201.12. The University's Senate Advisory Committee on University Affairs (SACUA) reviewed this matter on January 27, 2020, and SACUA voted to uphold the hearing committee's recommendation of dismissal on January 29, 2020. Defendant Schlissel, then President of the University, upheld the dismissal recommendation on March 26, 2020. The SACUA retained Hooper Hathaway PC to represent it in these proceedings while plaintiff was a client of this firm. Plaintiff describes this as a breach of contract as well because Hooper Hathaway had information that plaintiff shared with them as his attorneys of record.

In addition to his breach-of-contract claim, plaintiff alleges that the termination of his employment and tenure status evidences discrimination against him as a gay man. His complaint points to several investigations into alleged sexual harassment or sexual misconduct of

heterosexual men and women employed by the University, including defendants Philbert and Schlissel, which did not result in termination of tenured professorship.

On April 7, 2025, defendants moved for summary disposition. They refute plaintiffs' claim that his termination was unfounded or in contravention of his contract with the University. According to defendants, plaintiff pleaded guilty to a second-degree felony conviction of Sexual Assault of an Adult in Harris County (Texas) Criminal District Court. Defendants further allege that the OIE "received several complaints regarding his sexually inappropriate conduct," including allegations that he solicited students for sex in exchange for money, sent graphic videos to students, and used sexually inappropriate language in various settings. OIE's investigation included approximately 50 witness interviews and thousands of pages of documents, and plaintiff was represented by an attorney during the dismissal proceedings.

Defendants seek summary disposition on several grounds, including MCR 2.116(C)(6), because the allegations in this case are nearly identical with those raised by plaintiff in an earlier, federal lawsuit against these defendants. The federal district court dismissed plaintiff's claims with prejudice and, as of the date of defendants' motion for summary disposition, an appeal was pending. Defendants also assert that plaintiff's claims are barred by the three-year statute of limitations in MCL 600.6452(1) and that the claims must be dismissed because he failed to file a timely notice of intent as required by the COCA. Finally, defendants claim that summary disposition is appropriate under MCR 2.116(C)(10) as to the individual defendants because none of them were a party to his employment contract.

II. ANALYSIS

MCR 2.116(C)(7) authorizes summary disposition when, among other things, defendants are immune from plaintiff's claims as a matter of law. This Court reviews all pleadings and documentary evidence presented by the parties in the light most favorable to plaintiff as the nonmoving party. *McLean v Dearborn*, 302 Mich App 68, 72-73; 836 NW2d 916 (2013); *Lavey v Mills*, 248 Mich App 244, 249-250; 639 NW2d 261 (2001). "If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court." *Dextrom v Wexford Co*, 287 Mich App 406, 429; 789 NW2d 211 (2010). Immunity is the appropriate defense when a governmental body seeks summary disposition for failure to comply with the notice provisions of the COCA. *McCahan v Brennan*, 492 Mich 730, 737-738; 822 NW2d 747 (2012).

Michigan law is unequivocal: the notice-and-verification requirements of the COCA "apply to all claims against the state" except as expressly exempted in the COCA itself. *Christie v Wayne State Univ,* 511 Mich 39, 52; 993 NW2d 203 (2023). The statutory language is mandatory, stating "[f]or a claim against this state for property damage or personal injuries, the claimant *shall* file the claim or notice . . . within 6 months after the event that gives rise to the claim." MCL 600.6431(1) (emphasis added). Other types of claims, including breach of contract, "may not be maintained . . . unless the claimant within 1 year after the claim has accrued, files . . . either a written claim or a written notice of intent to file a claim." MCL 600.6431(1).

A claim accrues "at the time the wrong upon which the claim is based was done regardless of the time when damage results." *Scherer v. Hellstrom*, 270 Mich App 458, 463; 716 NW2d 307 (2006), quoting MCL 600.5827. "Wrong," for purpose of this analysis, is the date upon which defendants' alleged breach harmed plaintiff. *Frank v Linkner*, 500 Mich 133, 147; 894 NW2d 574

(2017). This is true regardless of whether the claim is one for breach of contract, *id.*, or for personal injuries, *Mays v Governor*, 506 Mich 157, 182; 954 N2d 139 (2020). The parties' contract determines the "wrong" in the context of the breach-of-contract claim. *Scherer*, 270 Mich App at 463. Plaintiffs' discrimination claim accrued "when the adverse *discriminatory acts* occur." *Joliet v Pitoniak*, 475 Mich 30, 32; 715 NW2d 60 (2006).

The Court need not evaluate plaintiff's employment agreement or the cited policies or guidance to determine when plaintiff's claims accrued because all of the actions described in the complaint as a material breach occurred more than one year before he filed the verified complaint or notice of intent. The earliest "wrong" occurred on August 9, 2018, when OIE began investigating the July 16, 2018 e-mail allegedly without notifying him, and the latest "wrong" occurred on March 26, 2020, when the Board of Regents affirmed termination of plaintiff's tenured professorship. Accordingly, under § 6431 of the COCA, plaintiff was required to file either a notice of intent or a written claim by March 26, 2021. Instead, he filed his notice of intent almost three years later, on March 22, 2024, and his complaint on March 5, 2025. Plaintiff failed to comply with the mandatory notice provisions in the COCA.

Plaintiff does not dispute that his contract claim accrued when his termination became final. Nor does he identify any adverse action taken by any defendant after this date that would support his discrimination claim. Rather, he requests the mandatory notice provisions be tolled because, on the date he was terminated (March 26, 2020), he was involved in criminal proceedings in Texas that required him to invoke his constitutional privilege against self-incrimination in those proceedings. This position lacks legal and factual support.

Plaintiff has not cited, nor is the Court aware of, any case in which the privilege was used to toll a statute of limitations period, much less the notice provisions in the COCA. The notice of intent requirement in the COCA does not require plaintiff to reveal any more than the claims in this lawsuit, i.e., that the University breached his employment contract and violated the ELCRA by terminating his tenured professorship. MCL 600.6431(2). The fact of his dismissal and the University records regarding it were not protected by the privilege. *Paramount Pictures Corp v Miskinis*, 418 Mich 708, 720-726; 344 NW2d 788 (1984). And, if he had filed a timely notice of intent, he could have waited to file a complaint until three years after his claims accrued. MCL 600.6452.

Moreover, the privilege is evidentiary and personal. Filing the complaint did not necessitate waiver of the privilege but, rather, plaintiff could have invoked the privilege and accepted whatever consequences arose in terms of evidentiary support for his claims. Under Michigan law, the privilege "applies to *evidence* in a civil proceeding which might subject the witness to criminal prosecution." *Paramount Pictures Corp v Miskinis*, 418 Mich 708, 726; 344 NW2d 788 (1984) (emphasis added). It does not protect plaintiff from the consequences of invoking this privilege in this proceeding. See, e.g., *Matter of Stricklin*, 148 Mich App 659, 665-666; 384 NW2d 833 (1986). Nor does it protect the production of evidence or records held by the University, by any defendant, or by plaintiff in his official capacity as a tenured professor of the University, which may be relevant to a claim or defense in this litigation. *Paramount*, 418 Mich at 720-722. Simply put, plaintiff was not faced with a choice of invoking his constitutional right against self-incrimination or timely filling this proceeding. If he had timely complied with the notice provisions of the COCA, then he could have invoked his privilege in this lawsuit and either sought a stay of proceedings or dealt with whatever consequences came in terms of the evidentiary

support for his claim. Michigan law does not authorize him to disregard the notice provisions by a late filing, as occurred here.

Plaintiff's position that defendants waived compliance with the notice provisions by not raising this as an affirmative defense is without merit. Compliance with the notice provisions of the COCA is a condition precedent to overcoming governmental immunity. *Christie*, 511 Mich at 48-52. Governmental immunity is not an affirmative defense that must be raised or waived. *Stephens v Dep't of Corrections*, ___ Mich App ___, ___; ___ NW3d ____ (2025).

Moreover, defendants raised the claim of governmental immunity in their first response to plaintiff's complaint, i.e., a motion for summary disposition filed in lieu of an answer. Even if the COCA requirements were affirmative defenses that could be waived, there is no basis for finding a waiver here. Plaintiff's failure to comply timely with the notice provisions in the COCA necessitates dismissal of his complaint.

Defendants' motion for summary disposition under MCR 2.116(C)(7) is GRANTED.

III. CONCLUSION

For the reasons explained above, IT IS ORDERED THAT defendants' motion for summary disposition under MCR 2.116(C)(7) is GRANTED and plaintiff's complaint is DISMISSED.

IT IS SO ORDERED. This is a final order that disposes of the last remaining issue and closes the case.

Date: Oct. 30, 2025

Hon. Brock A. Swartzle
Chief Judge, Court of Claims