

JUL 11 2014

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

TITLE:
CABADING v. CALIFORNIA BAPTIST
UNIVERSITYDATE & DEPT:
July 11, 2014
Department 3CASE NO.:
RIC1302245

CAM

COUNSEL:
None presentREPORTER:
None

JUL 11 2014

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PROCEEDING: COURT'S SUBSEQUENT RULING ON PLAINTIFF'S MOTION FOR
SUMMARY ADJUDICATION AND DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION OF ISSUES

This case involves the suspension, expulsion, and exclusion of a student from an undergraduate program at a private religious college. That student, Plaintiff Domainlor Javier Cabading, is a male to female pre-operative transgendered person. She applied to California Baptist University (CBU) for the fall 2011 semester as a "female" and was admitted on a merit scholarship.

The University subsequently learned that Plaintiff had appeared on a reality TV show to discuss her transgender identity. The University suspended her, later expelled her as a student, and excluded her from all University properties and from all community and public events held on campus for "fraud" on the grounds she had misrepresented that she was female.

Plaintiff administratively appealed as permitted by CBU regulations. The appellate body affirmed her expulsion as a student, as well as her exclusion from CBU properties otherwise open to the public, but overturned her exclusion from community and public events held on campus. Plaintiff did not seek judicial review of the disciplinary hearing by Petition for Writ of Administrative Mandamus.

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Plaintiff's First Amended Complaint contains five "Causes of Action" for:

- 1) Breach of Contract;
- 2) Breach of Implied Covenant of Good Faith and Fair Dealing;
- 3) Violation of the Unruh Civil Rights Act for her suspension;
- 4) Violation of the Unruh Civil Rights Act for her exclusion; and
- 5) Violation of the Unruh Civil Rights Act for her expulsion.

Defendants have filed Motions for Summary Judgment or in the Alternative for Summary Adjudication on all five Causes of Action. Plaintiff has filed Motions for Summary Adjudication of issues on the 3rd, 4th, and 5th Causes of Action. The Court now rules on those motions.

The Unruh Civil Rights Act Claims

We begin with the 3rd, 4th, and 5th "Causes of Action" for violations of the Unruh Civil Rights Act. Plaintiff complains that CBU violated the Act by suspending, excluding, and expelling her because she was transgendered.

The threshold issue is whether CBU is a "business establishment" for purposes of the Unruh Civil Rights Act. To the extent CBU is such a business establishment, it is subject to the provisions of the Act and can be held liable for discrimination in violation of the Act. To the extent it is not such an entity, it is not subject to liability for acts of discrimination prohibited by that Act.

The undisputed facts establish, as a matter of law, that for its on-campus educational activities, CBU is not a "business establishment" within the meaning of the Act.

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The undisputed facts also establish, as a matter of law, that CBU's off-campus business operations such as restaurants, theater, and libraries are "business establishments" subject to the provisions of the Act.

CBU is a private nonprofit religious corporation. It is a private religious college with a main campus in Riverside, and satellite operations in neighboring communities. It is a ministry of the California Southern Baptist Convention which selects CBU's Board of Trustees. All members of CBU's Board of Trustees are required to be members of Southern Baptist churches. The president of CBU and all of its full-time administrative officers must be affiliated with a Southern Baptist church. All of CBU's faculty, including adjunct faculty, must be practicing Christians. Almost half are Southern Baptist. Applicants for faculty positions, to teach both religious and secular courses, are required to identify their churches and pastors and disclose whether they attend church regularly. All faculty members are expected to integrate the Christian faith into their presentations of all subjects, including secular subjects.

Students are not required to be Christians, and the student body contains students from a wide array of religious beliefs. Only a small minority of CBU's most recent class was identified as Southern Baptist, but about 87% were identified as Christian. All full-time students, Christian and non-Christian, are required to take at least three courses in Christian Studies. Students are also expected to attend a chapel service of approximately 50 minutes duration each week. These services include Christian prayers, hymns, Bible readings, and a sermon.

CBU undergraduate students are subject to a strict moral code that prohibits sexual conduct outside of marriage, smoking, using alcohol, social dancing, gambling and

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practicing the occult. Students are made aware of these expectations and agree to abide by them.

At the same time, CBU is not cloistered. It offers graduate and undergraduate degrees in a wide array of professional and secular subjects including nursing, engineering, and business. It has a substantial public presence with over 7,000 students. It charges tuition, and advertises in the community. It recruits students from the general public. Its graduates enjoy increased vocational and professional opportunities. CBU is accredited by the Western Association of Schools and Colleges, a secular accreditation authority. It advertises the success of its graduates and its graduates enjoy a prestigious degree that provides opportunities in the secular workplace. It or its student receives federal funds available to other colleges, as well as bond funding on terms available to other colleges.

CBU owns and leases real property in Riverside. It operates a counseling center and library, which are open to the public. It operates an off-campus art gallery that is open to the public. It also has a tool company and restaurant that are operated on CBU owned property. It offers on-line courses and programs whose students are not subject to the strict moral code expected of on-campus students.

CBU thus consists of a very Christian faith-oriented on campus program, while simultaneously maintaining ancillary programs and services that are secular. It is the nature of the divide between CBU's on campus educational program and these other programs that is dispositive.

The Unruh Civil Rights Act reaches all of California's business establishments, but not all entities or associations, even those with commercial attributes fall within the definition of a "business establishment". In *Curran v. Mount Diablo Council of the Boy*

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Scouts (1998) 17 Cal.4th 670, our Supreme Court held that the Boy Scouts was not a business entity within the meaning of the Act. The Boy Scout organization had as its primary mission the inculcation of a specific set of moral values in its youth members. It was that focus on values that took the Boy Scouts outside of the long reach of the Unruh Civil Rights Act. The Scouts was a large organization with many thousand members and not selective about which boys could enroll. The Boy Scouts also engaged in many commercial activities including retail stores and licensing of its insignia. The Supreme Court found these activities did not change the primary nature of the organization.

It was the inculcation of values that was also dispositive in the case of *Doe (Jane) v. California Lutheran High School Association* (2009) 170 Cal.App.4th 828, where the Court of Appeal held that a private Lutheran High School was not a business establishment under the Unruh Civil Rights Act.

This Court has carefully compared the undisputed facts in this action with the facts set forth by the Court of Appeal in *Doe*. Specifically, the Court has attempted to ascertain how CBU's on-campus program is materially different from the Lutheran High School in *Doe*, and finds them to be materially indistinguishable. Both the Lutheran High School and CBU are religiously oriented educational entities. Both adhere to religious values and expect their students to adhere to those values. If anything, CBU is more stringent in the required religious affiliations of its faculty and expressly more restrictive in the moral code required of students. CBU expressly requires its faculty to integrate Christian values into every subject of its curriculum. The requirements that faculty members be Christian and that they incorporate Christian values into their teaching of secular subjects indisputably intertwines religion with the secular subjects.

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CBU receives or its students receive some level of public funding, something not at issue with the Lutheran High School. But, there is no evidence that CBU agreed to comply with the non-discrimination provisions of the Act in order to receive any funding and no evidence CBU acted unlawfully with respect to funding.

CBU is larger than the Lutheran High School both in campus size and student body. But, size is not dispositive. The Boy Scouts are a far larger organization than CBU. CBU operates an on-line educational program, and theater and libraries that are open to the public. These activities are larger in scope than those of the Lutheran High School, which sold football tickets, and had various fundraisers. But, in both *Curran* and *Doe*, the ancillary business operations of the organizations did not bring their core associational and educational functions within the scope of the Act.

Both CBU and the Lutheran High School teach secular as well as religious subjects. The Court of Appeal in *Doe* specifically noted that the Lutheran High School's religious message was "inextricably intertwined" with its teaching of those secular subjects. CBU teaches secular subjects as well. While proficiency in some of those subjects may impart an economic advantage to the student, mastery of the Lutheran High School's secondary school curriculum would also impart an economic advantage. In the case of CBU, every secular subject is expressly intertwined with a values-based Christian religious component, taught by a Christian. CBU students may be motivated by any number of factors in making the decision to attend that institution, just as some boys may join the Boy Scouts seeking to go camping rather than be taught lessons in the Scout Oath. But both the Boy Scouts and CBU obviously work to ensure their scouts and students are exposed to a specific set of values. Whatever economic benefit the student hopes to gain from the CBU educational

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experience, CBU clearly intends to send forth an engineer, nurse, businessperson, or teacher who will be able to apply its religious values in the secular world. Just as teaching camping, swimming, and other skills to boys does not transform the Boy Scouts into a commercial enterprise, neither does CBU teaching marketable skills to its students.

Finally, the Lutheran High School in *Doe* educated minors, while CBU, as a college, educates adults. There is no rational reason to believe that value-based organizations only lie outside the reach of the Unruh Civil Rights Act when they impart values to minors. Adults have as much right to enroll themselves in value-based educational programs as they have to enroll their children in such programs. And organizations such as CBU have as much right to attempt to impart values to adults as they do to children.

The Supreme Court in *Curran* and the Court of Appeal in *Doe* were both careful to avoid deciding the cases on First Amendment grounds, and CBU does not raise a First Amendment defense. Still, even without reaching the Constitutional issues, judicial interpretation of the Act requires a court to balance the State's compelling interest in eliminating discrimination with a recognition of the liberty interests of faith-based organizations and those persons who wish to be exposed to the teachings of such organizations.

Some programs, relatively few in number, are not business establishments within the meaning of the Unruh Civil Rights Act. CBU's on campus educational program is one of them.

CBU's Ancillary Programs

CBU has a number of programs that are not religiously or values-based and are open to the public. Its library, counseling center, art gallery, and on-line courses have little

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or no value-based component. They do not require patrons or participants to adhere to any moral code of conduct. They are essentially indistinguishable from similar commercial activities in the community. Still, these ancillary programs, although open to the public, do not grant members of the public access to CBU's faith-based undergraduate program, and do not transform CBU's faith-based undergraduate program into a business establishment.

See *Curran v. Mount Diablo Council of the Boy Scouts*, *supra*, at 17 Cal.4th 699-700, and *Doe (Jane) v. California Lutheran High School*, *supra*, at 170 Cal.App.4th 839.

Both *Curran* and *Doe* strongly suggested, without holding, that these distinct and severable ancillary business transactions would be subject to the Unruh Civil Rights Act. In dictum, the Supreme Court stated that the Boy Scouts retail operations would be subject to the Act, as did the Court of Appeal in discussing the Lutheran High School's sales of sweatshirts, football tickets, and access to golf tournaments.

Based upon the undisputed facts, this Court finds, as a matter of law, that CBU's ancillary business operations, such as its library, counseling center, and retail businesses such as restaurants operating on CBU properties are business establishments within the meaning of the Act.

Ruling on Plaintiff and Defendants' Motions on 3rd, 4th, and 5th

Causes of Action

As a value-based, religious, non-profit educational institution, CBU's on-campus educational program is not subject to the provisions of the Unruh Civil Rights Act as a matter of law. Defendants' Motion on the 3rd and 5th Causes of Action challenging Plaintiff's suspension and expulsion from the CBU undergraduate program is granted. Plaintiff's Motion on the 3rd and 5th Causes of Action is denied.

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Defendant CBU operates a number of on and off campus ancillary activities that are open to the general public. These ancillary operations are subject to the provisions of the Unruh Civil Rights Act. Defendants' Motion for Summary Judgment on the 4th Cause of Action challenging CBU's exclusion of Plaintiff from these ancillary activities is denied. Plaintiff's Motion for Summary Adjudication of Issues on the 4th Cause of Action is granted.

Plaintiff's Motion is granted as to the 4th Cause of Action based on the uncontroverted facts that she is a transgendered person, subject to the protections of the Act, and that the ancillary operations of CBU, separate from its on-campus undergraduate program are business establishments within the meaning of the Act. Plaintiff has also established that she was excluded from these ancillary activities with the exception of public events such as graduations.

At the hearing Plaintiff conceded that she was seeking the minimum statutory damages of \$4,000 per Cause of Action. Therefore, Plaintiff is entitled to statutory damages of \$4,000 on the 4th Cause of Action.

Ruling on Defendants' Motions on the 1st and 2nd Causes of Action

The 1st and 2nd Causes of Action are contract claims. Both "Causes of Action" allege breach of the same contract, the contract entered into between Plaintiff and CBU upon her enrollment as a student.

As an educational institution, CBU's rules governing student discipline provide for a quasi-judicial administrative hearing as part of the student disciplinary process. See "Compendium of Exhibits in Support of Defendants' Motion for Summary Judgment, or in the Alternative for Summary Adjudication of Issues" at Exhibit J, pages: CBU 03985-03986. When an entity provides for an administrative process, that process must be exhausted

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before seeking a judicial remedy. Even then, a Petition for Administrative Mandamus under Code of Civil Procedure section 1094.5 must be sought before any other judicial remedy.

Plaintiff's contract claims specifically complain about the shortcomings of the administrative hearing afforded by CBU. A court may not hear such a matter unless it is first brought by Petition for Writ of Mandate under Code of Civil Procedure section 1094.5. This is not to say that CBU's administrative hearing was fair, that the fact-finder was not biased, or that its discretion was not abused. All of those issues could have and should have been determined by a court in an Administrative Mandamus proceeding. Whether sounding in contract or tort, they may not be considered in this proceeding. See *Gupta v. Stanford University* (2004) 124 Cal.App.4th 407, 411-413.

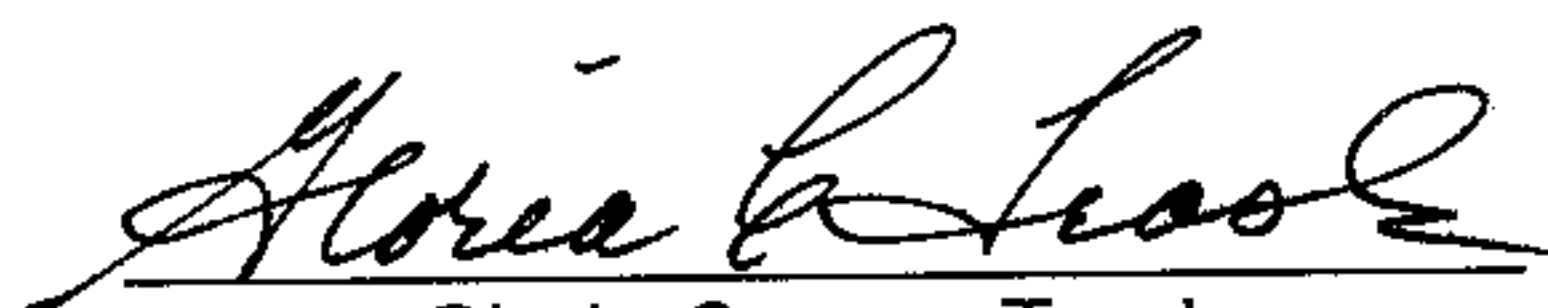
Defendants' Motion on the 1st and 2nd Causes of Action is granted.

Plaintiff's Motion for Summary Adjudication of Issues is denied as to the 3rd and 5th Causes of Action and granted as to the 4th Cause of Action. Plaintiff is awarded statutory damages in the amount of \$4,000 on the 4th Cause of Action.

Defendants' Motion for Summary Judgment is denied. Defendants' Motion for Summary Adjudication of Issues is granted as to the 1st, 2nd, 3rd, and 5th Causes of Action and denied as to the 4th Cause of Action.

Defendants to prepare the Judgment.

Dated: July 11, 2014


Gloria Connor Trask
Judge of the Superior Court

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
4050 Main Street
Riverside, CA 92501
www.riverside.courts.ca.gov

CLERK'S CERTIFICATE OF MAILING

DOMAINLOR JAVIER CABADING

vs.

CASE NO. RIC1302245

CALIFORNIA BAPTIST UNIVERSITY


TO:

I certify that I am currently employed by the Superior Court of California, County of Riverside and I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the attached 05/30/14 on this date, by depositing said copy as stated above.

Court Executive Officer/Clerk

Dated: 07/11/14

by:


JENNIFER A CASTILLO, Deputy Clerk

Notice 'CCM' has been printed for the following Attorneys/Firms
or Parties for Case Number RIC1302245 on 7/11/14:

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SUSSMAN SHANK LLP
1000 SW BROADWAY, STE 1400
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RIVERSIDE, CA 92501

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
Superior Court of California

Minute Order/Judgment

CASE NO.1302245 DATE:07/11/14 DEPT:03
CASE NAME: CABADING VS CALIFORNIA BAPTIST UNIVERSITY
CASE CATEGORY: Breach of Contract

HEARING: Ruling on Matter Submitted 05/30/14 RE: Motion for Summary
Judgment/Summary Adjudication

Honorable Judge Gloria Connor Trask, Presiding

Clerk: J. Castillo

Court Reporter: None

Court subsequently rules on matter taken under submission on
05/30/14.

As to Plaintiff's Motion for Summary Adjudication:

Motion for Summary Adjudication is denied as to the 3rd and 5th causes
of action.

Summary Adjudication Granted as to the 4th cause of action.

Plaintiff is awarded statutory damages in the amount of \$4000.00 on
the 4th cause of action.

As to Defendant's Motion for Summary Judgment and/or Summary
Adjudication:

Motion for Summary Judgment is denied.

Summary Adjudication Granted as to the 1st, 2nd, 3rd, and 5th causes
of action.

Summary Adjudication is denied as to the 4th cause of action.

Formal Order to be prepared, served and submitted by counsel for
CALIFORNIA BAPTIST UNIVERSITY.

Hearing re Jury Trial on 09/19/14 at 8:30 vacated.

Order to Show Cause re Receipt of Judgment as to CALIFORNIA BAPTIST
UNIVERSITY A CALIFORNIA CORPORATION set for 12/19/14 at 8:30 dept 03

Order to Show Cause Issued

Please see Court's Subsequent Ruling on Plaintiff's Motion for Summary Adjudication and Defendants' Motion for Summary Judgment or in the Alternative Summary Adjudication of Issues for entire ruling.

Notice to be given by clerk.

Notice sent to DAVIS WRIGHT TREMAINE LLP on 7/11/14

Notice sent to SUSSMAN SHANK LLP on 7/11/14

Notice sent to GRESHAM, SAVAGE, NOLAN, & TILDEN on 7/11/14