

CTS ORIGINAL

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U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT WORTH DIVISION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

2007 MAR 26 PM 2: 10

CLERK OF COURT

DR. SHERI L. KLOUDA,

Plaintiff,

v.

SOUTHWESTERN BAPTIST
THEOLOGICAL SEMINARY, and
LEIGHTON PAIGE PATTERSON,

Defendants.

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Civil Action No. 4-07CV-161-A

**PLAINTIFF'S FIRST AMENDED COMPLAINT AND REQUEST FOR
DECLARATORY JUDGMENT AND JURY DEMAND**

COMES NOW, Plaintiff, DR. SHERI L. KLOUDA ("Dr. Klouda" or "Plaintiff" herein), by and through the undersigned counsel, and for her Complaint, alleges as follows:

A. PARTIES

1. Plaintiff, DR. SHERI L. KLOUDA, an individual, is a citizen of and resides in the state of Indiana.

2. Defendant, SOUTHWESTERN BAPTIST THEOLOGICAL SEMINARY ("Southwestern" or "Defendant" herein), is a domestic nonprofit corporation that is incorporated under the laws of the State of Texas, with its principal place of business in Texas. Defendant is not incorporated in Plaintiff's home state of Indiana, nor does it have a

place of business there. Defendant may be served with process by serving its registered agent, Joe Breshears, at 2001 W. Seminary Drive, Fort Worth 76115.

3. Defendant, LEIGHTON PAIGE PATTERSON (“Dr. Patterson” or “Defendant” herein), is an individual residing in the state of Texas and may be served at his work address at 2001 W. Seminary Drive, Fort Worth 76115.

4. Southwestern is administered by a forty member Board of Trustees serving staggered terms of office. Trustees elect faculty members and administrative officers. It is anticipated that some if not all members of the Board of Trustees will be added as Defendants herein, on the basis of their actions and/or as necessary parties for purposes of the declaratory judgment requested herein.

B. JURISDICTION AND VENUE

5. The Court has jurisdiction over the subject matter of the claims pursuant to 28 U.S.C. § 1332(a)(1) because the Plaintiff and Defendants are considered citizens of different states and the amount in controversy exceeds \$75,000, excluding interest and costs.

6. The Court further has supplemental jurisdiction over the subject matter of the state law causes of action pursuant to 28 U.S.C. section 1367(a) because Plaintiff’s claims are so related to the claims within the Court’s original jurisdiction that they form part of the same case or controversy under Article 3 of the United States Constitution.

7. Venue of this suit lies in Northern District of Texas, Fort Worth Division, pursuant to 28 U.S.C. §1391(a)(2) because Defendants’ principal place of business is in this district and a substantial part of the events or omissions giving rise to the claims alleged herein occurred within this district, as more specifically described below.

C. CONDITIONS PRECEDENT

8. All conditions precedent to recovery have been performed or have occurred.

D. STATEMENT OF FACTS

9. Plaintiff, Dr. Sheri L. Klouda, was a prominent professor of Old Testament Languages in the School of Theology for the Defendant, Southwestern Baptist Theological Seminary. As a professor of Old Testament Languages, Dr. Klouda taught both male and female students. She is an accomplished theologian, who served as a professor at Southwestern for almost four years, impressing students and faculty alike, until she was forced out in the spring of 2006, because of her gender.

10. Southwestern's President, Defendant Dr. Leighton Paige Patterson, informed Dr. Klouda that he would not renew her contract to teach or recommend her for tenure based solely upon the fact that she was a woman.

11. According to Dr. Patterson, women are prohibited from teaching or ruling in any capacity over men, based on his interpretation of Scripture.

12. Upon his acceptance of the presidency at Southwestern, Dr. Patterson had publicly expressed his objective to build Southwestern's faculty with "God-called men."

13. At all times material hereto, Dr. Patterson was acting both individually, and within the course and scope of his employment with Southwestern. Also, at all times relevant to this lawsuit Dr. Patterson was a vice-principal of Southwestern. Because Dr. Patterson's malicious and tortious conduct occurred within the scope of his employment, in whole or in part, and to serve the interest of his employer, Dr. Patterson and Southwestern

are both responsible for Dr. Patterson's wrongful acts under the doctrine of respondeat superior and vice-principle liability.

14. Dr. Klouda received her bachelor's degree in Biblical Studies and her master's degree in Old Testament from Criswell College in Dallas, Texas in 1997 and 1998, respectively. She received her Ph.D. in Old Testament Theology from Southwestern in May, 2002. Prior to teaching at Southwestern, Dr. Klouda served as an assistant professor of biblical Hebrew at Beeson Divinity School at Samford University in Alabama.

15. Dr. Klouda initially began her career at Southwestern in the spring of 2000 as a teaching fellow in the School of Theology. She served in this capacity for three and a half years before being elected to the faculty by Southwestern's Board of Trustees as an assistant professor of Old Testament languages in April 2002.

16. As an elected member of the faculty, Dr. Klouda was on a tenure-track position at Southwestern. Southwestern's decision to hire Dr. Klouda as a member of its faculty was based upon the unanimous vote of its trustees.

17. Dr. Klouda was one of eight professors hired in April 2002 for a tenure-track position; there were six males and two females, with Dr. Klouda being the only female to teach at the School of Theology.

18. It was represented to Dr. Klouda that her contract with Southwestern would be renewed on a yearly basis based upon her performance.

19. At that time, in April 2002, there were forty professors teaching at Southwestern's School of Theology in Biblical Studies. Dr. Klouda was the only female in the School of Theology.

20. While at Southwestern, Dr. Klouda exhibited professional excellence at all times and excelled in the classroom. She built a strong reputation both as a teacher and a scholar, receiving high performance evaluations from both the students and the other faculty.

21. In addition to teaching at Southwestern, Dr. Klouda also served on the editorial committee and as a contributor to the Southwestern Journal of Theology.

22. Dr. Klouda enjoyed and intended to continue her teaching position at Southwestern. In reliance upon Defendants' representations regarding the renewal of her contract, Dr. Klouda and her husband, William, purchased a home in Arlington, Texas.

23. Dr. Klouda is the primary provider for her family due to illnesses suffered by her husband. The Kloudas have one child, a daughter, who was enrolled in high school in Arlington, Texas. The Kloudas were establishing roots in Texas, in reliance upon Defendants' representations regarding her position at Southwestern.

24. In June 2003, over a year after Southwestern unanimously approved Dr. Klouda for her tenure-track position, Southwestern hired Dr. Patterson as its president.

25. During a press conference following his appointment, Dr. Patterson was asked if he would hire women to teach in the School of Theology. He responded, "Dorothy (his wife) serves on the theology faculty," and that "provides somewhat of an answer."¹

26. He then added, or perhaps foretold, that "There are ample number of men who are well-qualified for those positions." Patterson said he planned to build the faculty with "God-called men."

¹ Dorothy Patterson was serving as Professor of Theology in Women Studies. She, unlike Dr. Klouda, only teaches women. While she is listed as teaching in Southwestern's School of Theology on its website, she actually works in Southwestern's School of Education.

27. Dr. Patterson's remarks caused Dr. Klouda some concern. However, her concerns were allayed when she met with Dr. Patterson in September 2003.

28. At that time, Dr. Patterson personally assured her that the administration change—his appointment—would not jeopardize her position.

29. He told her that “she had nothing to worry about,” that “he was satisfied with her position of service and the courses that she taught,” that “he had no intentions of reversing any previous board decisions,” and that her job was secure.

30. Dr. Klouda remained in her elected tenure-track position as a Professor of Hebrew until July 2006, continually receiving high marks from her peers and students.

31. Plaintiff's reputation and commitment to academic excellence reached beyond her teachings at Southwestern. Dr. Klouda regularly contributed to *The Bulletin for Biblical Research*, a journal specializing in the ancient Near East and biblical studies. Dr. Klouda was also a guest lecturer at both the 57th and 58th Annual Meeting of the Evangelical Theological Society in 2005 and 2006, respectively.

32. Most notably, in March 2006, Dr. Klouda received a prestigious grant from The Association of Theological Schools, the Lilly Grant for Theological Scholars, which partially funded her work entitled *Building a Biblical Theology for Today: The Theology of Intertextuality*.

33. Despite Dr. Klouda's continued success at Southwestern and her prominent recognition in her field, it turned out that due to a change in presidents at the seminary, Dr. Klouda would never attain tenure at Southwestern or be able to continue on in her chosen job. Defendant Patterson, if genuine in his stated reason for failing to renew her contract or recommend her for tenure, differed in his interpretation of Scripture from his

predecessor and the Board of Trustees, who, although of the same faith, found Dr. Klouda worthy of election to faculty and a tenure-track position.

34. Dr. Klouda was eventually forced from her position, not because of poor performance or a lack of credentials (neither of which could even remotely be attributed to Dr. Klouda), but because of her gender. She was a woman teaching men.

35. On or about April 25, 2006, Southwestern informed Dr. Klouda that her contract was terminated, effective December 31, 2006. Dr. Patterson told Dr. Klouda that he would not renew her contract or recommend her for tenure for one simple reason: because she was a woman.²

36. Dr. Klouda was told that she was “a mistake that the trustees needed to fix.”

37. The chair of Southwestern's board of trustees, T. Van McClain, later informed the Dallas Morning News that hiring a woman to teach men was a “momentary lax of the parameters.”

38. Dr. Klouda left Southwestern on August 1, 2006, after obtaining a teaching position at Taylor University in Upland, Indiana. She relocated her family out of financial necessity, incurring costs and financial hardship. She took a lower paying position, having to start over completely for the purpose of tenure evaluation at this new university.

² While Dr. Klouda was told of rumors by certain faculty in the summer of 2004 that she would not be receiving tenure, she was not officially or unequivocally informed of this decision by Defendant until April 2006.

E. CAUSES OF ACTION

**FIRST CAUSE OF ACTION
BREACH OF CONTRACT**

39. Plaintiff realleges paragraphs nine through thirty-eight in this Complaint and incorporates them by reference as if set forth in full.

40. Plaintiff and Defendants entered into an oral contract, wherein Plaintiff's contract would be renewed on a yearly basis in the event her performance evaluations warranted such renewal.

41. Southwestern's trustees unanimously voted to hire Plaintiff as a tenure-track professor, providing her with this type of employment status.

42. Plaintiff performed her obligations under the contract.

43. She was a highly regarded professor. Both her students and her peers gave her stellar reviews and performance evaluations.

44. Despite her extraordinary track record, Defendants did not renew Dr. Klouda's contract, nor was she recommended for tenure.

45. In failing to renew Dr. Klouda's contract because of her gender, Defendants breached their contract with Plaintiff.

46. The breach was material because Defendants did not substantially perform a material obligation required under the contract. Plaintiff's injuries are a natural, probable, and foreseeable consequence of Defendants' breach.

**SECOND CAUSE OF ACTION
FRAUD AND/OR FRAUD IN THE INDUCEMENT**

47. Plaintiff realleges paragraphs nine through thirty-eight in this Complaint and incorporates them by reference as if set forth in full.

48. As described herein, Southwestern, through its Board of Trustees and its President, represented to Plaintiff when she was elected to the faculty in April 2002 that she had a tenure-track position with Southwestern and that she would continue on in this position so long as her performance met certain standards.

49. Dr. Patterson even personally and specifically assured Plaintiff that her position with Southwestern was secure in a meeting at Southwestern in September 2003, despite the fact that she was a female teaching males.

50. These representations were material as they directly concerned Plaintiff's livelihood and her career path.

51. Plaintiff was induced to act on the information in that she accepted the position, refrained from seeking other employment, and continued on in the position, despite reservations, because of the statements of assurances made by Dr. Patterson.

52. In doing so, Plaintiff purchased a home and took other steps to establish herself and her family in Texas.

53. Plaintiff now knows that the representations made by Defendants were false.

54. Defendants falsely promised that she would remain in her position and that her position was not jeopardized by the fact that Plaintiff was a woman.

55. It is Plaintiff's belief and understanding now that Dr. Patterson knew at the time he assured Plaintiff that her position was secure in this regard, that her position with Southwestern was, in fact, not secure.

56. Defendants knew the representations were false or made the representations recklessly, as a positive assertion, without knowledge of the truth of the statements.

57. Defendants made the false material representations to Plaintiff with the intent that Plaintiff rely upon the representations.

58. Plaintiff did act on them, as she continued in the position and refrained from seeking other employment.

59. Thus, Plaintiff relied upon the representations which caused her injury.

60. Plaintiff was injured by Defendants' actions, including a reduction in salary upon being forced to find other employment, loss of retirement and other benefits, loss of pay and years toward tenure, mental anguish and emotional distress, in addition to other actual and consequential damages.

**THIRD CAUSE OF ACTION
PROMISSORY ESTOPPEL AND/OR EQUITABLE ESTOPPEL**

61. Plaintiff realleges paragraphs nine through thirty-eight in this Complaint and incorporates them by reference as if set forth in full.

62. Defendants made a promise to Plaintiff with the intention that Plaintiff act upon said promise. Plaintiff reasonably and substantially relied upon the promise to her detriment. Plaintiff's reliance was foreseeable to Defendants.

63. Plaintiff devoted seven years of her career working at Southwestern and believing that she was on track to become a tenured professor in Southwestern's School of Theology.

64. Due to Defendants' actions, Plaintiff suffered damages for which Plaintiff sues herein. Injustice can be avoided only by enforcing Defendants' promise.

65. Additionally and/or alternatively, Southwestern is estopped from using a change in its President's policy as an excuse to fail to renew her contract or recommend her for tenure; alternatively, Southwestern waived all such rights to undertake those actions.

**FOURTH CAUSE OF ACTION
DECLARATORY JUDGMENT**

66. Plaintiff realleges paragraphs nine through thirty-eight in this Complaint and incorporates them by reference as if set forth in full.

67. Plaintiff brings this claim for a declaratory judgment under both Federal Rule of Civil Procedure 57 and 28 U.S.C. §2201, 2202.

68. A declaratory judgment action should be entertained when (1) the judgment will serve a useful purpose in clarifying and settling legal relations in issue and (2) it will terminate and afford relief from uncertainty, insecurity and controversy giving rise to the proceeding.

69. Because in this matter Dr. Klouda was declared to be unfit for purposes of her contract and tenure-track position, a declaratory judgment will clarify the rights and obligations of the parties.

70. She was labeled as a "mistake" and told by Dr. Patterson that she had no standing to serve in her duly elected position.

71. Accordingly, Plaintiff requests the Court to declare that Plaintiff had full standing and capacity to serve and continue performing the obligations of her contract with Southwestern. Further, Plaintiff seeks recovery of all reasonable and necessary attorneys' fees as allowed under Texas state law and the Declaratory Judgment Act of Texas, for the necessary declaration requested herein.

72.

**FIFTH CAUSE OF ACTION
DEFAMATION**

73. Plaintiff realleges paragraphs nine through thirty-eight in this Complaint and incorporates them by reference as if set forth in full.

74. Defendants defamed Plaintiff by publishing statements of fact, both orally and in writing, and through interviews with the media, that referred to Plaintiff.

75. Such statements were false and injurious to her reputation.

76. Dr. Patterson labeled Plaintiff a “mistake” and stated, expressly and impliedly, that Dr. Klouda was unfit to teach at Southwestern and unfit to teach men.

77. In addition to Dr. Patterson’s comments, the chair of Southwestern’s Board of Trustees, T. Van McClain, stated to *The Dallas Morning News* that hiring a woman to teach men was a “momentary lax of the parameters.”

78. These statements were false and in making them, Defendants were acting with actual malice. Due to such statements, Plaintiff suffered pecuniary injury as described herein and loss of reputation and standing, in addition to emotional distress and mental anguish damages, and the attendant disruption of life, relating to the suggestion that she is unfit and/or unqualified to teach at Southwestern.

**F. VICARIOUS LIABILITY/RESPONDEAT SUPERIOR/
VICE-PRINCIPAL LIABILITY**

79. Plaintiff realleges paragraphs nine through thirty-eight in this Complaint and incorporates them by reference as if set forth in full.

80. Under the doctrine of respondeat superior and vicarious liability, whenever in this Complaint it is alleged that the Defendant Southwestern did any act or thing, it is meant that the Defendant Southwestern’s officers, agents, trustees, employees or representatives did such act and/or that at that time such act was done, it was done with the

full authorization or ratification of Defendant Southwestern or was done in the normal and routine course and scope of employment of Defendant Southwestern's officers, agents, trustees, employees, or representatives.

81. Under the doctrine of respondeat superior and vicarious liability, whenever in this Complaint it is alleged that Defendant Patterson did any act or thing, it is meant that at the time such act or thing was done, it was done with the full authorization or ratification of Defendant Southwestern or that it was done in the normal and routine course and scope of employment. In particular, that said act or thing was within Defendant Patterson's general authority, that it was done in furtherance of Defendant Southwestern's business and for the accomplishment of the object for which Defendant Patterson was hired.

82. In addition, Defendant Southwestern is vicariously liable for the actions of Defendant Patterson under the theory of vice-principal. At all times relevant to this lawsuit Defendant Patterson was a vice-principal of Southwestern. Defendant Southwestern is a corporation and Defendant Patterson, as the president of Southwestern, is a corporate officer of Defendant Southwestern. Defendant Patterson committed a tortious act by defaming Dr. Klouda, as set forth herein. Defendant Patterson also is a person with authority to employ, direct and/or discharge Defendant Southwestern's employees; he is engaged in nondelegable duties of Southwestern; and he is a person to whom Defendant Southwestern delegated the management of its business. Finally, Defendant Patterson's defamatory actions were directly related to Defendant Southwestern's business as they related to the termination and fitness and/or qualifications of Dr. Klouda, an employee of Southwestern.

83. Because Dr. Patterson's malicious and tortious conduct occurred within the scope of his employment, in whole or in part, and to serve the interest of his employer,

Dr. Patterson and Southwestern are both responsible for Dr. Patterson's wrongful acts under the doctrine of respondeat superior and vice-principal liability.

G. DAMAGES

84. As a direct and proximate result of Defendants' conduct, Plaintiff suffered actual damages, including, but not limited to, a reduction in salary, loss of retirement, loss of life insurance, loss of benefits, loss of three years pay toward tenure evaluation and determination, loss of professional and academic years toward tenure, loss of equity in her home, costs and expenses associated with moving and with maintaining an unoccupied house and other actual and consequential damages. In addition, Plaintiff suffered a loss of reputation, standing and good will, as well emotional distress, mental anguish and disruption of life, all of which, in addition to the damages listed above, will exceed the minimum jurisdictional requisites.

85. In addition, Plaintiff has incurred reasonable and necessary attorneys' fees.

H. ATTORNEYS' FEES

86. Plaintiff has been forced to hire attorneys and pay them a reasonable fee for their services based upon reasonable and necessary services performed and the reasonable value thereof at the time and place incurred. Therefore, Plaintiff seeks the recovery of her attorneys' fees pursuant to Texas Civil Practices & Remedies Code § 38.001 and/or § 37.009.

I. DEMAND FOR JURY

87. Plaintiff hereby demands a trial by jury.

J. PRAYER

WHEREFORE, Plaintiff demands judgment against the Defendants for such relief as follows:

1. Any and all damages, and actual damages, as proven at trial;
2. Declaratory relief as described herein;
3. Pre-judgment interest;
4. Reasonable attorneys' fees incurred in the presentation of this suit;
5. Reasonable attorneys' fees incurred in the presentation of any appeal;
6. Post-judgment interest at the highest rate allowable by law from the date judgment is entered until paid in full;
7. Costs of suit; and
8. Such other relief as the Court deems just and proper.

Respectfully submitted,

**THE RICHARDSON LAW
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83.10**