# MISSOURI COURT OF APPEALS WESTERN DISTRICT

JOSEPH LUCERO, APPELLANT vs.

# THE CURATORS OF THE UNIVERSITY OF MISSOURI, RESPONDENT

**DOCKET NUMBER WD74768** 

DATE: FEBRUARY 13, 2013

Appeal from:

The Circuit Court of Boone County, Missouri The Honorable Mary "Jodie" Asel, Judge

Appellate Judges:

Division One: Thomas H. Newton, P.J., Joseph M. Ellis and Gary D. Witt, JJ.

Attorneys:

George S. Smith, for Appellant

Paul R. Maguffee, for Respondent

### MISSOURI APPELLATE COURT OPINION SUMMARY

### MISSOURI COURT OF APPEALS WESTERN DISTRICT

# JOSEPH LUCERO, APPELLANT v. THE CURATORS OF THE UNIVERSITY OF MISSOURI, RESPONDENT

WD74768 Boone County, Missouri

Before Division One Judges: Thomas H. Newton, P.J., Joseph M. Ellis and Gary D. Witt, JJ.

In 2008, Appellant Joseph Lucero filed a petition for damages against the Curators of the University of Missouri ("Respondent"). In his petition, Appellant sought damages for Respondent's alleged breach of contract and breach of the implied covenant of good faith and fair dealing and also prayed for a declaratory judgment setting forth the rights and obligations that exist among the parties with regard to Respondent's faculty irresponsibility proceedings. Appellant's claims arise out of events that occurred between Appellant and a professor while he was enrolled as a student at the University of Missouri School of Law. More specifically, Appellant alleged that Respondent failed to adhere to several provisions in its Collected Rules and Regulations and Faculty Bylaws in attempting to handle the situation between him and the professor. Appellant further alleged that Respondent's failure to adhere to those provisions constituted a breach of contract and the implied covenant of good faith and fair dealing. Appellant also asserted that Respondent did not properly follow its procedures in addressing the faculty irresponsibility charge he filed against the professor and sought a declaratory judgment from the circuit court outlining the parties' rights and obligations with respect to Respondent's faculty irresponsibility proceedings.

In 2011, Respondent filed a motion for summary judgment in which it alleged that Appellant failed to identify any discrete or specific promises it made to Appellant for purposes of establishing a breach of contract or a breach of the implied covenant of good faith and fair dealing claim. The motion further alleged that Appellant lacked standing to request a declaratory judgment regarding Respondent's faculty irresponsibility procedures. The circuit court granted Respondent's motion for summary judgment. Appellant now raises seven points on appeal

#### **AFFIRMED**

### **Division One holds:**

(1) The trial court did not err in granting Respondent's motion for summary judgment with respect to Appellant's breach of contract claim because Appellant failed to allege or

establish any specific promise or obligation that Respondent breached that could form the basis of a breach of contract claim. Several of the provision from Respondent's Collected Rules and Regulations and Faculty Bylaws upon which Appellant relies do not constitute specific promises because they are aspirational in nature and do not represent objective or quantifiable promises made by Respondent. Furthermore, the provisions in Respondent's Faculty Bylaws pertaining to Respondent's procedures for faculty irresponsibility charges cannot form the basis of Appellant's breach of contract claim because such provisions were created as a mechanism by which Respondent could monitor its own faculty and any intervention by the court regarding such provisions would amount to judicial supervision of a university's internal procedures for monitoring its faculty.

(2) The trial court did not err in granting Respondent's motion for summary judgment with respect to Appellant's claim of breach of the implied covenant of good faith and fair dealing because Appellant offered no evidence that Respondent acted in bad faith with respect to the faculty irresponsibility proceedings but instead merely made the conclusory assertion that Respondent decided to drop the faculty irresponsibility charge he filed against the professor because the professor was engaging in the type of harassment that he alleged.

February 13, 2013

Date:

Opinion by Joseph M. Ellis, Judge

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