

IN THE CHANCERY COURT OF LOWNDES COUNTY, MISSISSIPPI

**MISSISSIPPI UNIVERSITY FOR WOMEN
ALUMNAE ASSOCIATION**

PLAINTIFF

V.

CAUSE NO: 2007-0220-C

**CLAUDIA A. LIMBERT, individually
and in her official capacity; Mississippi University
for Women; and Board of Trustees of Mississippi
State Institutions of Higher Learning**

DEFENDANTS

OPINION AND JUDGMENT OF THE COURT

On October 25, 2006, Dr. Claudia A. Limbert (“Dr. Limbert”) and the Mississippi University For Women Alumnae Association (“Association”) entered into an affiliation agreement which was approved by the Board of Trustees of Mississippi State Institutions of Higher Learning (“IHL”). This agreement contained a provision that required the Association to draft a new Constitution and By-Laws, which had to be approved by Dr. Limbert, and a provision that either party could terminate the agreement upon sixty (60) days notice. On February 1, 2007, Dr. Limbert sent a letter to the Association giving them the requisite sixty (60) days notice to terminate the agreement, disaffiliating the Mississippi University for Women (“The W”) with the Association.

This action was commenced on March 29, 2007, four days prior to the disaffiliation, when a Complaint was filed by “The National Executive Board” against Dr. Limbert, in her individual capacity, seeking a preliminary injunction to prevent the termination of the affiliation agreement. Dr. Limbert filed a Motion to Dismiss alleging that the proper parties were not

before the Court, that The National Executive Board was not a legal entity and thus no relief could be granted. Instead of dismissing the Complaint, the Court allowed the Association's attorney to amend the Complaint and serve the proper parties.

On April 5, 2007, the Association filed its Amended Complaint for Preliminary Injunction, Permanent Injunction and Other Relief against Dr. Limbert and IHL. The Defendants filed their Answers and Motions to Dismiss. Dr. Limbert, on behalf of The W, filed a Counterclaim seeking to enjoin the Association from using the name "Mississippi University for Women." The Association thereafter filed its Answer to the Counterclaim. Hearings were held by agreement on May 8, 2007, and June 5, 2007, on the request by both parties for permanent injunctions. At the conclusion of the hearings, the Court requested trial briefs and all were received by the Court on or before July 29, 2007.

Facts

The Court, having reviewed the evidence, considered the briefs filed by the parties and finding it has jurisdiction over the parties and subject matter, finds as follows:

In August 2006, IHL mandated that all public universities in Mississippi enter into operating agreements with its affiliated entities. *IHL Policy 301.0806*. Among other things, the IHL policy required that the operating agreements, and any changes to them, be reviewed by IHL. Throughout *IHL Policy 301.0806*, the IHL consistently mandated the independence of the affiliated entities. Under IHL policy, alumnae associations are such an entity.

For over 100 years, there has been a relationship between the Association and The W. Of course, the names of both have changed over the years. In 1994, the Association was incorporated with the State of Mississippi. There is no question that it or its predecessors have

been recognized as the alumnae association for The W.

The relationship between the Association and Dr. Limbert has always been tenuous, and when asked why disassociate with the “old” alumnae group, Dr. Limbert responded, “There is a difference between involvement and interference.” Dr. Limbert explained that from the beginning of her tenure in 2002, she has encountered difficulty with some members and officers of the Association. According to Dr. Limbert, the problem began from the moment she accepted the job as President of The W. To illustrate, she said that the IHL sent a plane to pick her up in Pennsylvania and deliver her to the “W” as a sort of introduction to the university. On this plane were several alumnae members. These alumnae proceeded to tell her who at the university they wanted her to discharge and the positions they wanted her to create. In a later incident, an alumnae member told her she needed an event planner and that this particular member needed to be it. She wanted Dr. Limbert to provide her with a salary, staff and an office.

During her tenure, Dr. Limbert stated that she has received numerous complaints regarding the Association and/or its members from other areas¹ of the university as well. Specifically, their complaints were that they did not want to work with the alumnae group.

¹Dr. Limbert listed Admissions, Student Services and Institutional Advancement as some of these other areas.

In the Spring of 2006, the controversy surrounding MUW Foundation Director, Scott Rawls, and the alumnae emails² surfaced. After finding out about these emails, Dr. Limbert had the hard drives of alumni relations' computers copied. In a similar vain, allegations of sexual harassment, racial discrimination and theft were made against Scott Rawls. Dr. Limbert stated that these allegations, all at the instigation of alumnae members, were proven to be false after an expensive investigation. Finally, Lydia Quarles, as Commissioner of the MS Workers' Compensation Commission³ began sending abusive and harassing emails to Dr. Limbert regarding the MUW Foundation and Scott Rawls.

Tom Meredith, Commissioner of IHL, also testified that members of the Association met

²These emails were admitted as part of a report prepared by University Counsel, Perry Sansing. *See Exhibit D-12*. The emails were retrieved from The W computers located in the alumni relations office and were principally used by former alumni director, Patsy McDaniel, and her assistant, Traci Ervin. The earliest emails are from October 2005, with the latest being in May 2006. Parties to these emails include a small contingent of former alumni officers and board members who Dr. Limbert felt were interfering with the administration of university business. This group of alumnae members, which according to Dr. Limbert's testimony comprised approximately 12 to 15 women, of which the following were specifically named by her: Ricki Garrett, Kaye Cobb, Gail Laws, Lynn Curtis, Jimmie Moomaw, Lillian Wade, Jan McSpadden, Bev Jones, Linda Ross Albee and Lydia Quarles, are set out as some of the people receiving and sending the emails in Exhibit D-12. In addition, the report by referencing various individual emails, attempts to explain Dr. Limbert's concerns with this contingent of Association officers and board members. Principally, according to Mr. Sansing's report, the emails show the following: 1) the group's attempt to compete with the MUW Foundation regarding fundraising; 2) the disclosure of confidential donor information by an alumni office employee to certain Association officers and a director; 3) overall efforts of this small Association contingent to undermine the management of The W; 4) interference with the MUW Foundation audit; 5) and support by this contingent to fund litigation against the Foundation and The W.

³At the time of the trial, Lydia Quarles was no longer the Commissioner of the MS Workers' Compensation Commission. She was and still is an IHL employee holding a position at Mississippi State University. As a result of her new position, she could no longer belong to a university board pursuant to a policy change adopted by IHL, and thus is no longer an officer and/or board member of the Association.

with him and made complaints regarding Dr. Limbert. When asked if they wanted a new president, this group responded “yes” and stated who they wanted to be president. The alumnae members also made uncomplimentary remarks regarding the physical appearance of Dr. Limbert.

Thus, when Dr. Limbert initially entered into the negotiations with the Association for affiliation, it was clearly her intent to prevent the current alumnae members from exercising such dominance over the organization as to continue to push forward an agenda of removing her and trying to control the management and leadership of the university itself. She insisted that the Association change it’s Constitution and By-Laws. Thus, through the affiliation agreement, she imposed new bylaws that would address her principle concern with the association - the nomination and election of officers⁴.

⁴According to the testimony of Betty Lou Jones, Past President of the Association, nominations and elections have been and are conducted for the Association officers as follows:

Betty Lou Jones: ... “ there is a nominating committee and the past president - and this is in the by laws - the past president of the alumnae association is automatically the chairman of the nominating committee. And as is the case and it is recommended by Robert’s Rules of Order, the acting president has very little, if any, input into that nominating procedure. The nominating committee chairperson who is this year Meredith Talley, past president, chooses a nominating committee of five people from the past presidents’ committee, and this is also in the bylaws and has been in the bylaws for a number of years...

....The nominating committee meets and then discusses officers and choose(s) the officers who would normally be elected. This year was a little different. Lillian Wade who I referred to as the President Elect had to resign form the office of President Elect because in the affiliation agreement, the IHL had required that in order for a person who works for IHL, they had to be given special permission to serve on the board. That could have happened if the President (Dr. Limbert) would have asked the IHL Board for that. ...But when I asked Dr. Limbert to make that exception, she said that she would not do that. The three officers that we had that were employees of the IHL were Lydia Quarles who worked for the Workmens’ Compensation Division of the State, Alma Ellis, who worked for the University of Southern Mississippi, and then Lillian (Wade) who is employed by Mississippi State University.

....Normally, on any given year, the three officers that are elected from the floor are the Secretary, the Treasurer and the Vice President because those other two officers moved up in succession....Each year the nominating Committee presents a slate of officers, they bring that to the meeting, and than at the meeting, there is a call from the floor at each office . In other words, we say, “Nominated for the treasurer is Mary Ann Herrington. Are there any other nominations from the floor?” And then there has to be a motion that those nominations cease, it has to be voted on, and then you move to the next office. And that’s the way the elections were held this year at homecoming at a board meeting on campus when it was the annual business meeting of our association to elect officers.”

Dr. Limbert wanted bylaws that were more inclusive. She did not like the bylaws proposed by the alumnae association because the nominations process would remain the same and elections would continue to be conducted at homecoming which would keep the same small group in charge of the Association. The Court can infer that she means the same small group that first met her on the airplane, that various university groups have found difficult to work with, that sent the disparaging emails, and finally made the false allegations against Scott Rawls, a former employee of the university.

Betty Lou Jones, who took over as President of the Association in April 2006, paints a different picture. She stated that the alumnae association, specifically her, was making every effort to serve the university. She stated that she first received the affiliation agreement in September 2006. Ms. Jones emphasized that the Association did not perceive the agreement as “frightening” only something that was required by the IHL board. She first became aware that the agreement was a point of contention on October 1, 2006, when she was told that it would have to be signed by October 27, 2006. It was at that point she stated that she read the agreement and realized it was “punitive” towards the Association. According to Ms. Jones, the agreement contained restrictive language that was not in the spirit of cooperation between two entities trying to affiliate. She stated that “we” contacted other schools about their affiliation agreements and upon receiving them realized that the Association’s was much different.

Ms. Jones stated that the Association in turn resubmitted a new affiliation agreement patterned after the Mississippi State University and University of Southern Mississippi agreements. This was rejected by The W and the Association sent another draft on October 19,

2006. It was at this point, that Ms. Jones claims she was informed⁵ that the deadline for signing the agreement was no longer October 27, 2006, but October 21, 2006. Thereafter, Ms. Jones was informed that The W had retained the services of Cal Mayo an attorney, to represent it in the negotiations involving the affiliation agreement. In response, the Association sought legal advise of its own. After an Association board meeting on October 21, 2006, Betty Lou Jones signed the affiliation agreement as President of the Association on October 25, 2006. Dr. Limbert signed on behalf of The W on October 27, 2006.

Under the terms of the agreement, the Association's governing board was to provide to Dr. Limbert, for her review and approval, a new Constitution, By-Laws and a mission Statement for the Association, all of which were to be consistent with the mission and priorities of The W, the agreement and IHL policy. Once approved in writing by Dr. Limbert, the same were to be presented to the Association for approval at its meeting in April 2007. The agreement further stated that the failure of the Association to gain membership approval may result in the termination of the agreement. *See Paragraph 2.17 of Exhibit D-9.*

Betty Lou Jones understood that she then had until January 15, 2007, to get the necessary By-Laws approved by Dr. Limbert. After working approximately three hours on revisions to the By-Laws and sometime around December 6, 2006, the Association submitted its first draft to Dr. Limbert. On January 4, 2007, the Association received a letter from Dr. Limbert requesting additional changes, all of which the Association did not accept.

⁵She did not state who informed her.

On January 5, 2007, Betty Lou Jones met with Dr. Limbert to go over the By-Laws. Accordingly to Ms. Jones there were four items that the Association and Dr. Limbert could not agree on following the meeting: 1) the election of officers - the Association wanted to maintain its current method of nominating and electing officers and Dr. Limbert proposed that all officers, including president, would be elected each year; 2) Dr. Limbert wanted the chairman of the nominating committee to be the Director of Alumni Affairs and she would appoint four members of the nominating committee and the Association would appoint three members; 3) the nominations from the floor would have to be approved by 75% of those voting; and 4) Dr. Limbert was to approve any awards given by the Association based on loyalty and not service.⁶

Eventually, negotiations between the parties regarding the By-Laws broke down and both thereafter conducted negotiations through their attorneys. Deadlines were extended and the parties continued to submit proposed changes without either party giving in on the issues. In February 2007, Dr. Limbert began the process of disaffiliation.

Analysis

While Dr. Limbert's intent is understandable, the requirement from IHL that the

⁶The Court notes that Paragraph 2.20 of the agreement provides that the Association shall consult with The W's Vice President for Institutional Advancement ("VPIA") regarding awards and honors given by the Association. The agreement stated that a consensus was to be reached between the VPIA and the Association before any awards and honors were to be given and that the Association's By-Laws were to specify a process for giving awards and honors consistent with the agreement.

Association be independent, is at odds with her desire to exercise enough control to change the mixture of leadership and the goals of some of the members of the Association to remove her and/or manage the university.

The Association maintains that Dr. Limbert's actions in refusing to approve its By-Laws and terminating the affiliation agreement were in bad faith, i.e., that she wrongfully terminated the affiliation agreement. Dr. Limbert argued that the Affiliation Agreement was a contract between The W and the Association and one of the provisions of the contract allowed either party to terminate with sixty (60) days notice, and that Dr. Limbert had the right, in exercising her judgment to protect the interest of The W, to terminate its affiliation with the Association. Further, according to Dr. Limbert, the language in the agreement was clear and unambiguous and the provision regarding termination should be taken on its face and applied.

Indeed, Dr. Limbert has the right to exercise her judgment in terminating the affiliation agreement; however, when a party to that contract alleges that her actions were in bad faith, and IHL has no policy to review that action⁷, injured parties can only turn to a Court of equity. The Court's only role is to determine if her actions were in violation of the law.

The Mississippi Supreme Court has held that "a duty of fair dealing, which emanates from the law on contracts", provides that "[a]ll contain an implied covenant of

⁷ According to *IHL Policy 301.0806*, the agreements of affiliation between alumni associations and universities must be approved by IHL. In addition, any changes in the agreements must be approved by IHL. However, IHL has no provision regarding reviewing the termination of the agreements. Although the policy is silent, Tom Meredith, Commissioner of IHL, testified that this authority is given to the presidents. If an agreement to affiliate entered by a president must be approved, it is logical that IHL should have to approve any decision to disaffiliate.

good faith and fair dealing in performance and enforcement." ***Morris v. Macione***, 546 So.2d 969, 971 (Miss. 1989). The covenant of good faith and fair dealing in contracts has force in the statutory law as well. "Every contract or duty within this code imposes an obligation of good faith in its performance or enforcement." ***Cenac v. Murray***, 609 So. 2d 1257, 1272 (Miss. 1992) [quoting Miss. Code Ann. § 75-1-203 (1972)].

The Mississippi Supreme Court, relying on the Restatement (Second) of Contracts, has stated with approval this language:

Good faith is the faithfulness of an agreed purpose between two parties, a purpose which is consistent with justified expectations of the other party. The breach of good faith is bad faith characterized by some conduct which violates standards of decency, fairness or reasonableness.

Cenac, 609 So. 2d at 1272 [quoting Restatement (Second) of Contracts § 205, 100 (1979)].

It is within this context that the actions of Dr. Limbert must be examined. The credible evidence is that Dr. Limbert's decision to disaffiliate with the Association over its By-Laws was inconsistent with and in violation of IHL policy. The Association submitted its By-Laws, which contained provisions for the nomination and election of officers. It was these provisions that Dr. Limbert would not approve and led to the letter of disaffiliation.

The Association has been incorporated by the State of Mississippi since 1994. As an incorporated organization it has the right to have its own Constitution and By-Laws. It has the right to decide on the nomination and election of its officers. It is an independent entity. IHL, throughout *Section 301.0806*, repeatedly refers to the independence of university entities. IHL only required that the entities' missions and

policies be consistent with the various universities' missions and policies . Tom Meredith, Commissioner of IHL, when questioned about the definition of "independent," testified that it was left up to the university presidents to define. However, the Mississippi Supreme Court has defined an "independent entity." ***In The City of Picayune v. Southern Regional Corporation***, 916 So.2d 510 (Miss. 2005), although not exactly on point, the Court, in defining a charitable foundation, held "that an independent entity possess[es] free will to the extent provided by its own articles of incorporation, bylaws and the laws of the state in which it is incorporated."

Based on the credible evidence, this Court finds that Dr. Limbert's refusal to approve the By-Laws, which controlled the nomination and election of officers, showed an intent to control the Association and deprive it of its free will, thereby taking away its independence. Dr. Limbert's action in terminating the agreement over the By-Laws, violated the implied good faith inherent in all contracts and therefore was in bad faith.⁸

Although not specifically pled in the Association's pleading, but raised by it in trial, is the claim that the university, by disaffiliating the Association, violated certain constitutional rights. The Mississippi Constitution, as well as the United States Constitution, guarantees all persons free speech. In fact, the Mississippi Constitution gives a religious tone to the protection, ".....freedom of speech...shall be held sacred."

See ***Miss. Const. art. III, §13; and Mississippi Employment Sec. Comm'n v.***

⁸IHL policies could have set standards for the nomination and election of officers within affiliated entities (i.e., required broad membership, inclusion, open meetings, diverse leadership), but it is a step too far to have IHL employees control the election process and call them "independent."

McGlothin, 556 So.2d 324 (Miss. 1990). As stated in **ABC Interstate Theatres, Inc. v. State**, 325 So.2d 123, 127 (Miss. 1976), this expression of “religious veneration” has established the view that Mississippi’s right of free speech is “more protective of the individual’s right of freedom of speech than...[is] the First Amendment...”

The Court must accept the testimony of Tom Meredith that IHL delegated to Dr. Limbert the authority to make the decisions regarding affiliation and disaffiliation alone. If that is so, then Dr. Limbert acted with the power of the sovereign, and if she acts with the power of the government, she is restricted by all the requirements of the Fourteenth Amendment to the United States Constitution prohibiting denial of rights under the First and Fifth Amendments, as well as the Mississippi Constitution, providing for free speech and due process.

When asked why she disaffiliated with the Association, in addition to the By-laws, Dr. Limbert detailed comments made by Association members in 2002. She testified to emails sent by members and/or officers of the Association criticizing her administration and administrators she hired as well as allegations made by members and/or officers of the Association regarding a former employee of the university. She testified to alumnae members and/or officers contacting members of IHL.

The evidence clearly shows that Dr. Limbert was motivated by a well-grounded fear, which the Court is sympathetic towards, that an independent group of alumnae were trying to undermine her administration. In fact, according to Tom Meredith, this group already had a successor in mind.

The Court, in evaluating the complaints, does not find that the members and/or

officers of the Association had any bonafide grievances against her. And if it were the Court's responsibility to determine whether or not Dr. Limbert merited the criticism heaped on her by some of the membership of the Association, the Court would clearly find that it was unmerited. However, in a democracy, one must allow the most vicarious and unrestrained speech. And even parties who engage in speech that seems patently unfair and unworthy of protection, are accorded that protection.⁹

The Court, therefore, finds that the primary motivating factor behind Dr. Limbert's disaffiliation with the Association were the actions outlined above of the various members and/or officers of the Association that pertained to the so-called "criticism" of Dr. Limbert and her administration. Dr. Limbert saw these actions as undermining her administration and by changing the Association's By-Laws, she sought to restrict this disruptive voice. Therefore, the Court finds that Dr. Limbert's termination of the affiliation agreement was accomplished for constitutional impermissible reasons and must be set aside. When an official's actions are motivated by constitutionally impermissible grounds, they are *per se* in bad faith, as well as violative of this state's constitutional provisions.

Conclusion

An injunction mandating that Dr. Limbert uphold the existing and valid affiliation

⁹See *Evers v. State*, 131 So.2d 653, 657-659 (Miss. 1961)(The people have the right to criticize the courts and each person has a "right to be vulgar"); and *Sullens v. State*, 4 So.2d 356, 362 (Miss. 1941)(A person has the right "to speak wisdom or even heresy").

agreement between the Association and the University, dated October 25, 2006, and that Dr. Limbert operate under the affiliation agreement in good faith for the duration of the Agreement is hereby ordered and issued. Since the actions of Dr. Limbert in terminating the agreement were in bad faith, actions taken by her to form a new alumnae association and enter into a new affiliation agreement were also in bad faith. Therefore, Dr. Limbert and IHL are mandated to rescind any affiliation agreements made by Dr. Limbert with any other alumni group. Obviously, the request by Defendants for injunctive relief is denied.

SO ORDERED, ADJUDGED AND DECREED, this the _____ day of September, 2007.

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CHANCELLOR