IN THE COURT OF CLAIMS OF OHIO

DR. CARLO M. CROCE Plaintiff v. THE OHIO STATE UNIVERSITY BOARD OF TRUSTEES Defendant	Case Nos. 2020-00626JD and 2022-00187JD Judge Lisa L. Sadler DECISION

{¶1} This consolidated action arises from plaintiff's employment with The Ohio State University (OSU). Pursuant to L.C.C.R. 4(D), defendant's motion for summary judgment is before the court, fully briefed and ripe for decision. For the reasons stated below, the court GRANTS defendant's motion for summary judgment.

Background

{¶2} At the outset, the court notes that the parties have had a lengthy and complicated employer-employee relationship, at times involving confidential processes and procedures. To this end, the court will not detail every fact about the events that gave rise to the disputes between the parties. Despite the voluminous amount of evidence submitted, the parties in large part do not dispute the material facts of these consolidated actions. After extensively reviewing every piece of evidence, much of which is sealed or redacted due to confidentiality concerns, the court recapitulates below only those facts relevant to determining whether summary judgment is appropriate.

{¶3} In 2004, OSU offered plaintiff—and plaintiff accepted—positions of employment as a professor with tenure, a department chair, an endowed chair, and two director positions within its College of Medicine. Croce Depo., p. 32, 42, Defendant's Exh. B. Particularly relevant, plaintiff's appointment as department chair was "for a period of four years and [was] renewable upon review by the Dean of the College of Medicine and Public Health as established by university policies." *Id.* Similarly, "[t]he appointment to the endowed chair in cancer research [was] for a period of four years and [was] renewable subject to review by the Dean according to established university policies." *Id.* Additionally, the offer letter informed plaintiff of the following compensation:

> Your total OSU compensation will be $475,000 exclusive of benefits structured. You will have a primary appointment in the College of Medicine as Professor with tenure holding an endowed chair. Within the first two years, it is expected that you will seek and obtain grant funding to support your salary to 100% of the NIH salary cap. *If after the first four years and in the unlikely event that your productivity declines with regard to your grant or research output your personal compensation may be adjusted accordingly. Similarly, if you meet agreed upon annual productivity goals, you will be eligible for up to an annual bonus amount not to exceed 10% of your OSU salary.* (Emphasis added.)

Id; *see also* Defendant's Answers and Objections to Plaintiff's First Set of Interrogatories, Interrogatory No. 6.

{¶4} With respect to the position as department chair, plaintiff was appointed to his first four-year term in 2004 and then officially reappointed to his second four-year term in 2008. *Croce v. Ohio State Univ.*, Franklin C.P. No. 18CV-10788, 2019 Ohio Misc.LEXIS 7390, *13-16 (Dec. 16, 2019). After the expiration of his second term, plaintiff was never reappointed to a third term in 2012, and he was not recommended for reappointment to a fourth term in 2016. *Id.* Although plaintiff and OSU operated as if reappointments had occurred in 2012 and 2016, the court of common pleas concluded that plaintiff was serving as department chair in an at-will capacity subject to removal at any time. *Id.* at *17.

{¶5} Sometime in 2016, plaintiff interviewed with The New York Times for an article. Croce Depo., p. 21-23, 26-29, 59, 85. After plaintiff became aware that The New York Times was going to publish some disagreeable information, he hired counsel related to the impending article. *Id.* at p. 59. In March 2017, The New York Times released said article, which details various "allegations of data falsification and other scientific misconduct" involving plaintiff dating back to 2013. Croce Depo., Defendant's Exh. F.

{¶6} According to plaintiff, this article damaged his reputation. Croce Depo., p. 21-23, 28-29, 86. As a result, plaintiff sued The New York Times and the other individuals involved with publishing this article for defamation. *Id.* at p. 21-23, 26-29, 59-60, 83-86. Although plaintiff's tenure at OSU is referenced throughout the article, OSU was involved neither with developing the article nor with publishing defamatory information about plaintiff. *Id.* at 27-29. All of the lawsuits related to The New York Times article were dismissed. *Id.* at 104-105.

{¶7} After numerous allegations involving plaintiff were formally reported to OSU, OSU reviewed the allegations consistent with its obligations under federal law and formed a College of Medicine Investigation Committee (COMIC) to investigate the allegations of possible research misconduct in August 2017. Wold Depo., p. 9, Plaintiff's Exh. 4; Croce Depo., p. 58-59; Carruthers Depo., p. 18-19.

{¶8} While the COMIC investigation was ongoing, OSU reappointed plaintiff to his endowed chair position on May 17, 2018. Croce Depo., Defendant's Exh. A. In the reappointment letter, the dean of the College of Medicine specifically stated: "You have been extremely productive and I am pleased to recommend you for appointment to another term effective July 1, 2018-June 30, 2022. This appointment is subject to satisfactory performance and is at the discretion of the Dean of the College of Medicine." *Id.*

{¶9} Then in October 2018, OSU conducted an annual review of plaintiff in his capacity as department chair after which it concluded that plaintiff "continues to be highly focused on his own personal career activities and does not provide sufficient effort and attention to his responsibilities as a chair" and "fails to meet even the minimal requirements to serve as departmental chair." Croce Depo., Defendant's Exh. C. In November 2018, the dean of OSU's College of Medicine asked plaintiff to step down as department chair, but plaintiff refused. October 28, 2020 Complaint, ¶ 16-17. Soon thereafter, OSU formally informed plaintiff he would be removed as department chair. October 28, 2020 Complaint, ¶ 18.

{¶10} In December 2018, plaintiff filed a complaint for declaratory and injunctive relief in the court of common pleas alleging, in pertinent part, that OSU was improperly removing him as department chair in violation of Ohio Adm.Code 3335-3-35(B). *Croce*, 2019 Ohio Misc.LEXIS 7390, at *12. Ultimately, the court of common pleas found OSU was entitled to judgment as a matter of law because plaintiff was not formally reappointed to a four-year term in accordance with Ohio Adm.Code 3335-3-35(A) and, consequently, "he was subject to removal at any time, and the procedure set forth in OAC 3335-3-35(B) is not applicable." *Id.* at *17.

{¶11} Effective January 1, 2019, plaintiff was no longer serving as department chair. Croce Depo., p. 48; October 28, 2020 Complaint, ¶ 18. Notwithstanding, plaintiff continued to serve as an endowed chair in cancer research, which was separate and distinct from his appointment as a department chair. *See id.* at p. 54. Despite no longer serving as department chair in 2019 and 2020, it is uncontroverted that plaintiff's direct compensation did not decrease following his removal. *See* Defendant's Answers and Objections to Plaintiff's First Set of Interrogatories, Interrogatory No. 6. Specifically, plaintiff's annual compensation of $804,461.40 remained unchanged for 2018, 2019, and 2020. *Id.*

{¶12} In October 2020, plaintiff filed his first lawsuit in the Court of Claims—Case No. 2020-00626JD—asserting, in pertinent part, claims of breach of contract and promissory estoppel against OSU ("October 28, 2020 Complaint"). *See* Case No. 2020-00626JD, May 5, 2023 Decision. In relevant part, plaintiff alleged that he met all his productivity goals but was not paid his bonus in 2018. October 28, 2020 Complaint, ¶ 46, 49. Additionally, plaintiff asserted that he was entitled to a separate annual bonus for serving as department chair and was not paid this bonus in 2018, 2019, and 2020. *Id.*

{¶13} In July 2021, the COMIC completed its investigation. Croce Depo., Defendant's Exh. G; Wold Depo., Plaintiff's Exh. 4. While the COMIC determined that the allegations raised did not amount to research misconduct, the COMIC found improprieties in various publications and were concerned with plaintiff's laboratory management. Croce Depo., Defendant's Exh. H; *see also* Wold Depo., Plaintiff's Exh. 4. As a result, the COMIC recommended that OSU revoke plaintiff's endowed chair appointment along with other non-disciplinary administrative actions. Croce Depo, Exh. H; Wold Depo., Plaintiff's Exh. 4.

{¶14} In September 2021, OSU informed plaintiff that it would be implementing the COMIC's recommendations and plaintiff's appointment to the discretionary endowed chair position would be revoked effective September 2021. Croce Depo., p. 90; Moses Depo., Plaintiff's Exh. 8. While plaintiff disagrees with the non-disciplinary administrative actions, he also recognized OSU implemented them because of the COMIC's findings. Croce Depo., p. 90. Additionally, plaintiff did not deny OSU's authority to implement those recommendations. *Id.* at 91-92.

{¶15} Thereafter in November 2021, plaintiff's counsel sent a letter demanding that OSU "purchase advertising space in national publications including but not limited to the New York Times highlighting both his major scientific and medical contributions as well as the University's ultimate findings that he did not commit one single instance of research misconduct after *four years* of an exhaustive investigation." Additionally, the letter states: "As you know, Dr. Croce was forced to defend himself in two different lawsuits against the New York Times, James Glanz and 'Dr.' Sanders. He expended significant sums of money and is requesting reimbursement for these amounts and all related expenses." *See* March 4, 2022 Complaint, Exh. 2.

{¶16} With respect to rehabilitation following a research misconduct investigation, subsection K of the section on miscellaneous matters set forth by the version of OSU's University Policy and Procedures Concerning Research Misconduct in effect during plaintiff's research misconduct investigation ("Section K") states:

> *In any case in which a Respondent is found not to have committed research misconduct*, any reference to the case shall be removed from the files of the University including the personnel file of the Respondent, except that an official file shall be kept by either the Executive Vice President for Academic Affairs and Provost or by the Vice President for Research, as provided for in E above. The Vice President for Research or Coordinator shall be responsible for exercising reasonable efforts to accomplish such removal. *The University shall also work with the Respondent to rectify any injury done to the reputation of Respondent, including, with the permission of Respondent, release of a press announcement of the results of the investigation. The steps to be taken to accomplish rehabilitation of the Respondent, including any requested economic rehabilitation, shall be at the discretion of the Vice President for Research*. (Emphasis added.)

Wold Depo., p. 25, Plaintiff's Exh. 2; *see also* Croce Depo., Defendant's Exh. E. To this end, OSU "chose to assume a mandatory duty to work with [plaintiff] in these circumstances to rehabilitate his reputation." *Croce v. Ohio State Univ. Board of Trustees*, 2024-Ohio-2138, ¶ 58 (10th Dist.). Additionally, "[t]he discretion afforded to [OSU] in selecting '*the steps to be taken* to accomplish [plaintiff's] rehabilitation, including any requested economic rehabilitation," is secondary to [OSU's] initial contractual obligation to work with appellant to rectify any injury to his reputation." *Id.* at ¶ 59.

{¶17} On a separate occasion in December 2021, plaintiff specifically responded to OSU's September 2021 communication to inform the College of Medicine of his dismay over, among other things, the COMIC's "lengthy witch hunt" and the investigation involving Dr. Sanders because "he was the driver of the defamatory New York Times article." Moses Depo., Plaintiff's Exh. 9. Additionally, plaintiff challenged some of the non-disciplinary administrative actions, claiming he "cannot be reasonably expected to" comply with the requirements implemented. *Id.*

{¶18} Taking plaintiff's December 2021 communication as a letter of "refusal to comply with the requirements imposed on [him] by the university to ensure responsible, ongoing management of [his] laboratory and its personnel", OSU informed plaintiff in January 2022 that if he did not comply with its September 2021 requirements by February 2022, then OSU would take additional actions to address his failure to comply. Moses Depo., Plaintiff's Exh. 10.

{¶19} Although plaintiff's December 2021 communication to the College of Medicine references the November 2021 request his counsel made to "Remediate and Reimburse" plaintiff, it is undisputed that plaintiff relied on his counsel to communicate with OSU regarding the rehabilitation of his reputation. *Compare* Moses Depo., Plaintiff's Exh. 9 *with* Croce Depo., p. 99; March 4, 2022 Complaint, Exh. 2; Lester Affidavit, Attachment 1.

{¶20} In February 2022, OSU's Senior Associate General Counsel in the Office of Legal Affairs "worked with [plaintiff's counsel] to address [plaintiff's] compliance with the non-disciplinary administrative measures" and "[d]uring these discussions, [they] discussed [plaintiff's] request for rehabilitation but were unable to reach an agreement on the steps to be taken." Lester Affidavit, ¶ 4. While plaintiff was not aware of any discussions between his counsel and OSU about how to rehabilitate his reputation, plaintiff acknowledges that any steps taken to rehabilitate his reputation are within OSU's discretion. *See* Croce Depo., p. 117, 126-129.

{¶21} In March 2022, plaintiff filed his second lawsuit in the Court of Claims—Case No. 2022-00187JD—asserting, in pertinent part, claims of breach of contract and declaratory judgment ("March 4, 2022 Complaint"). *See Croce*, 2024-Ohio-2138, at ¶ 69. In relevant part, plaintiff alleged that OSU's failure to formally respond to his counsel's November 2021 letter concerning "Remediation and Reimbursement" on his behalf constitutes a breach of contract for violating Section K. *See* March 4, 2022 Complaint, ¶ 31, Exh. 2. Additionally, plaintiff sought a court order compelling OSU to advertise in national media outlets equivalent to The New York Times that he was exonerated from all of the research misconduct allegations. *See* March 4, 2022 Complaint, p. 14.

{¶22} Thereafter, a major scientific journal called Nature published an article about the results of OSU's investigation in July 2022, which clarifies more than once that plaintiff did not personally engage in research misconduct. Croce Depo., p. 56-58, 116, 118-119, Defendant's Exh. D. Although plaintiff recognizes that this article explains the findings of OSU's investigation, he depones that it still does not say "what [his] opinion was of the case with the New York Times" and he "wanted to tell that . . . the article in the New York Times was made up." *Id.* at p. 118-124. Put simply, when plaintiff spoke with Nature, his intent was to rebut the New York Times article. *Id.* at p. 118, 121-125.

{¶23} As of 2025, plaintiff continued to receive an annual salary in excess of $800,000 from OSU. *Id.* at p. 34. Throughout the pendency of this litigation and OSU's research misconduct investigation, plaintiff had multiple discussions with a cancer institute in Minnesota regarding a job opportunity at a higher salary than what he currently makes at OSU. *Id.* at p. 35. In October 2025, plaintiff deponed that he did not take the Minnesota job opportunity primarily because his "scientific work has been going extremely well" and relocating could "interrupt [his] work." *Id.* at p. 35, 37.

{¶24} However, plaintiff was also concerned that a better position with a higher salary would compromise his ongoing litigation. *Id. at* p. 111-113, Defendant's Exh. J. Specifically, plaintiff stated the following during his August 2021 deposition when asked about the job opportunity in Minnesota:

Q. You were advancing there?

A. Yes.

Q. Whatever happened with that?

A. I was very scared from something you said. Since that would have been a job probably more – more remunerated than mine, that the people, with all my lawsuit that were going on, would consider that not a drawback but an improvement. So that all this litigation and so on I was involved in were doing me good instead of bad. You mentioned that to me. So if I got a job for, let's say, a million and a half a year instead of what I'm making, 800, 900 thousand dollars, people in a jury would think that I was not damaged at all.

Q. Understood. You improved your position by moving; therefore, you haven't –

A. You said it. You said it. And so I said, okay, I got all this mess and now I'm going to lose this litigation because I'm going to get a better position.

Q. Okay.

A. That's what happened.

Id. at p. 113-114, Defendant's Exh. J. Although plaintiff did not initially recall his prior testimony during his October 2025 deposition, when he was asked to review the August 2021 deposition transcript, he deponed: "I think that that might be also true, but I think the most important point is the other one." *Id.* at p. 111-114. Put simply, plaintiff had a more lucrative employment opportunity and it is undisputed that he remained employed at OSU by his own choice. *Id.* at p. 35-37, 111-115.

Standard of Review

{¶25} It is well settled that "'[s]ummary judgment is a procedural device to terminate litigation and to avoid a formal trial where there is nothing to try.'" *Orr v. Schweitzer*, 2021-Ohio-1786, ¶ 12, quoting *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358 (1992). Before awarding summary judgment, courts should take caution and "resolve any doubt in favor of the non-moving party." *Darden v. City of Columbus*, 2004-Ohio-2570, ¶ 8 (10th Dist.), citing *Murphy* at 359. Additionally, courts cannot weigh the evidence or determine the credibility of witnesses when considering whether summary judgment is appropriate. *Grubach v. Univ. of Akron*, 2020-Ohio-3467, ¶ 40 (10th Dist.).

{¶26} Importantly, courts shall not render summary judgment "unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made . . . ." Civ.R. 56(C). Specifically, the summary judgment evidence must "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Id.* Indeed, it is well established that courts should not render summary judgment unless,

> construing the evidence most strongly in favor of the nonmoving party: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, that conclusion being adverse to the nonmoving party.

Robinette v. Orthopedics, Inc., 1999 Ohio App. LEXIS 2038, *7 (10th Dist. May 4, 1999).

LAW AND ANALYSIS

{¶27} While this consolidated action has had a lengthy history, the merits of plaintiff's remaining claims have not been determined. *See generally Croce*, 2024-Ohio-2138, at ¶ 71 ("On remand, nothing in this decision should be construed as passing judgment on the merits of appellant's case."). Initially, the court notes that plaintiff has chosen to abandon his "claim for promissory estoppel but rather grounds his claims for the bonus(es) in state contract law as pled." Plaintiff Dr. Carlo M. Croce's Opposition to Motion for Summary Judgment Filed By Defendant The Ohio State University, p. 5. As a result, the court will only address his claims for breach of contract and declaratory judgment.

Breach of Contract

{¶28} To establish a breach of contract, plaintiff must show the existence and terms of a contract, his performance of the contract, OSU's breach of the contract, and damage or loss resulting from the breach. *Frank v. Nationwide Mut. Ins. Co.*, 2003-Ohio-4684, ¶ 12 (10th Dist.).

{¶29} When the existence of a contract is not in question and a court must construe a contract,

> the intensions of the parties are to be ascertained from the language of the instrument. In reviewing the language, *common words appearing in a written instrument will be given their ordinary meaning*. If the meaning is unambiguous, a court will not create a construction contrary to its plain terms. Moreover, a written agreement does not become ambiguous simply because its operation will work a hardship on one of the parties and create an advantage for the other. (Cleaned up.)

Traveny v. Univ. of Akron, 1999 Ohio App. LEXIS 6528, *8 (10th Dist. Aug. 12, 1999).

Unpaid Bonus(es)

{¶30} With respect to plaintiff serving as a department chair or an endowed chair, it is uncontroverted that no written contract exists outlining a specific bonus. The sole basis upon which plaintiff relies to support that he is entitled to a bonus for 2018-2020 is his own testimony that he received an annual bonus for serving as department chair from 2004 to 2017. Even viewing this evidence most strongly in plaintiff's favor, receiving or discussing past bonuses does not constitute a promise of a guaranteed future bonus. *See Mazzitti v. Garden City Group, Inc.*, 2007-Ohio-3285, ¶ 46 (10th Dist.), citing *Grosko v. Dana Commercial Credit Corp.*, 2000 Ohio App. LEXIS 3910, *5-6 (6th Dist. Sept. 1, 2000) ("Isaac's statements to Mazzitti about the previous year's bonus . . . were not promises of a guaranteed bonus.").

{¶31} Additionally, the record is completely void of any evidence, let alone a binding agreement, that holding a chair appointment provides direct compensation whatsoever. To the contrary, the record establishes that plaintiff's annual compensation remained the same from 2018 to 2020 despite being removed as department chair effective January 1, 2019. Similarly, the record demonstrates that plaintiff's annual compensation did not decrease after he was removed as an endowed chair in 2021.

{¶32} Furthermore, the record lacks any specificity about the unpaid bonus(es). While plaintiff alleges he received an annual bonus for serving as department chair and is entitled to $180,000 for three years of unpaid bonuses, he provided no Civ.R. 56

evidence to corroborate that allegation. Moreover, it is well established that plaintiff only served as department chair during 2018, only one year out of the three-year span of time for which he claims he was entitled to these annual bonuses. Also, this court has already previously determined, consistent with the court of common pleas, that plaintiff was not and could not be wrongfully removed as department chair. *See* Case No. 2020-00626JD, May 5, 2023 Decision; *Croce*, 2019 Ohio Misc. LEXIS 7390, at *17. So, at most, the issue before the court is whether he is entitled to a bonus for serving as department chair during 2018.

{¶33} To this end, plaintiff identified neither how that amount is calculated nor any arguable agreement upon which this court could reasonably conclude that OSU promised to pay him an annual bonus for merely being department chair. Even assuming arguendo that OSU should have allowed plaintiff to continue serving as department chair during 2019 and 2020, plaintiff has only testified generally about his past bonuses and has not provided any evidence to demonstrate that a valid contract existed or otherwise established that a specific promise made by OSU legally entitled him to receive an annual bonus for holding a chair position. Consequently, the court finds that reasonable minds can come to but one conclusion that plaintiff cannot establish the existence of a contract detailing a bonus related to holding a chair appointment. Therefore, defendant met its initial burden under Civ.R. 56(C), and plaintiff failed to show a genuine issue exists for trial. *See generally* Civ.R. 56(E).

{¶34} In contrast, it is undisputed that plaintiff's 2004 offer letter from OSU contemplates an annual performance-based incentive in writing. Curiously, plaintiff deponed that he did not remember being eligible for an annual productivity bonus and does not believe his entitlement to a productivity bonus is an issue in this litigation. Because the record is void of any specific evidence about the bonus(es), this court has no way of determining whether the bonuses plaintiff received from 2004 until 2017 were productivity bonuses that plaintiff mistook as a bonus related to his service as a department chair. Or, if plaintiff was not mistaken and he indeed received the prior bonuses because he was department chair—as he has repeatedly claimed—and not because he met annual productivity goals, then the record is conversely void of any evidence that OSU had an established history of ever paying plaintiff a productivity bonus in accordance with the language in the 2004 offer letter.

{¶35} Notwithstanding, plaintiff's 2004 offer letter states the following with respect to performance-based compensation:

> If after the first four years and in the unlikely event that your productivity declines with regard to your grant or research output your personal compensation may be adjusted accordingly. Similarly, if you meet agreed upon annual productivity goals, you will be eligible for up to an annual bonus amount not to exceed 10% of your OSU salary.

While plaintiff argues the language of the offer letter creates a conditional right and not unfettered discretion, he has cited no legal authority in support of this position. Conversely, defendant argues that plaintiff was not contractually owed a bonus because any bonus payment was discretionary. Upon review, the court agrees.

{¶36} Even resolving every doubt in plaintiff's favor and concluding for purposes of summary judgment that OSU had an established history of paying plaintiff a productivity bonus, the court reiterates that receiving or discussing past bonuses alone does not guarantee a future bonus. *See Mazzitti* at ¶ 46. Moreover, the specific language of the offer letter merely speaks to plaintiff's potential to receive a bonus. Aside from indicating that any such bonus would certainly be less than 10% of plaintiff's salary, the offer letter does not promise a precise amount or detail exactly how said amount would be calculated on an annual basis. This discretionary nature is reinforced by the sentence starting with the word "similarly" to anchor the performance-based incentive to the immediately preceding sentence, which indicates the potential for plaintiff's salary to be "adjusted" if he failed to meet productivity goals.

{¶37} To this end, plaintiff cannot establish that he suffered damages, if any, since he was never promised a specific bonus. Specifically, the court finds that it is clear and unambiguous that the two sentences in the 2004 offer letter that contemplate productivity simply work together to function as a discretionary carrot and stick, and there is no way to construe such language as a guaranteed bonus. *See Mazzitti* at ¶ 47, quoting *UGS Corp. v. Musti*, 2007 U.S. Dist. LEXIS 7440, *32-33 (S.D.Ohio Feb. 1, 2007) ("a pure performance-based bonus, based upon that employee's personal evaluation by his supervisor is entirely discretionary with the employer . . . ."). Because the unpaid bonuses in question are discretionary in nature and based on OSU's assessment of plaintiff's annual productivity, plaintiff is not legally entitled to recover the same. *See Mazzitti* at ¶ 40-48 (collecting cases).

{¶38} While the court acknowledges that the parties disagree about plaintiff's productivity, the court finds that such a dispute is not material to whether plaintiff is legally entitled to recover the unpaid bonus(es) because neither sentence in the offer letter details what metrics OSU is obligated to rely on when assessing plaintiff's annual productivity for purposes of adjusting his salary or calculating a bonus. *See, e.g. Frank* at ¶ 13 ("The fact that appellant does not *agree* with his evaluation is not material with regard to whether or not Nationwide breached the contract."). Insofar as OSU has a contractual duty to perform, the only arguable obligation OSU has under the language of the offer letter is to consider plaintiff's productivity and his eligibility for the bonus payment. *Compare Frank* at ¶ 14.

{¶39} On this record, it is undisputed that OSU certainly considered plaintiff's productivity multiple times: first, as a faculty member—as evidenced by the 2018 performance review and plaintiff's subsequent removal as department chair; second, plaintiff's productivity in cancer research—as evidenced by plaintiff's May 2021 reappointment to the endowed chair; and third, plaintiff's productivity as a laboratory manager—as evidenced by the non-disciplinary administrative actions recommended by the COMIC and plaintiff's subsequent removal as endowed chair in September 2021. Whether plaintiff disagrees with OSU's assessment of his productivity and its ultimate decision to not pay him a productivity bonus does not negate the fact that OSU fulfilled any arguable obligation to consider his productivity. Consequently, the court finds that reasonable minds can come to but one conclusion that defendant did not breach a contract with plaintiff for nonpayment of any productivity bonus to which plaintiff lays claim. Therefore, defendant met its initial burden under Civ.R. 56(C), and plaintiff failed to demonstrate that there is a genuine issue for trial. *See generally* Civ.R. 56(E).

Rehabilitation

{¶40} There is no question that, because plaintiff was "found not to have committed research misconduct," OSU assumed a contractual obligation under Section K to "work with" plaintiff to rectify "any injury" to his reputation caused by the investigation. *See Croce*, 2024-Ohio-2138, at ¶ 58.

{¶41} The court will first address whether there is a genuine issue for trial as to whether OSU has breached its duty to "work with" plaintiff. While Ohio law is silent as to what it means to "work with" another, the ordinary meaning of "work with" is patently clear under the circumstances. Applying the ordinary meaning in this context, the term "work" is an intransitive verb that means "to produce a desired effect or result." *Merriam-Webster Online Dictionary*, https://www.merriam-webster.com/dictionary/work. And the term "with" is a preposition that is "used as a function word to indicate *a participant in* an action, transaction, or arrangement." (Emphasis added.) *Merriam-Webster Online Dictionary*, https://www.merriam-webster.com/dictionary/with. Taken together, the plain meaning of this intransitive verb phrase is analogous to "collaborate" or "cooperate", both of which mean "to participate or assist in *a joint effort* to accomplish an end." (Emphasis added.) *Merriam-Webster Online Thesaurus*, https://www.merriam-webster.com/thesaurus/collaborate; *Merriam-Webster Online Thesaurus*, https://www.merriam-webster.com/thesaurus/cooperate.

{¶42} According to the unambiguous language of the policy, OSU fulfilling its initial contractual obligation requires mutual performance from plaintiff. To this end, it is undisputed that plaintiff did not personally seek to "work with" anyone at OSU to rehabilitate his reputation. Aside from having various informal discussions about his reputation needing rehabilitation, it is undisputed that plaintiff relied on his counsel to work with OSU in this regard. OSU submitted evidence that plaintiff's counsel discussed the request for rehabilitation with the Senior Associate General Counsel from OSU's Office of Legal Affairs, but the two were unable to reach an agreement on the steps to be taken. While plaintiff criticizes this affidavit as a makeweight, plaintiff has come forward with no evidence that these conversations between his counsel and counsel for OSU did not take place or that OSU did not try to reach an agreeable outcome.

{¶43} Instead, the record demonstrates that plaintiff has made explicit demands and OSU seemingly disagrees that it must comply with those demands. Importantly, plaintiff's own testimony demonstrates his true objective is to rebut The New York Times article. However, plaintiff demanding OSU perform specific actions regarding an article that OSU played no role in publishing hardly demonstrates collaboration to rectify any injury caused by the COMIC investigation.

{¶44} Additionally, the court is not persuaded by plaintiff's argument that these circumstances call for compelling specific performance. Initially, this court ordering OSU to further "work with" plaintiff would be futile because OSU has full discretion in the steps it takes to accomplish any rehabilitation. While the court acknowledges there is no evidence that OSU responded to plaintiff's demands in writing, the plain language of Section K does not require a formal response. The fact that discussions between plaintiff's counsel and counsel for OSU have taken place but not resulted in a mutually agreeable outcome speaks to OSU ultimately acting within its contractually conferred discretion after first meeting its pre-requisite obligation to "work with" plaintiff. *See generally Croce,* 2024-Ohio-2138, at ¶ 55, 59 ("The discretion afforded to [OSU] in selecting '*the steps to be taken* to accomplish [plaintiff's] rehabilitation, including any requested economic rehabilitation," is secondary to [OSU's] initial contractual obligation to work with appellant to rectify any injury to his reputation.").

{¶45} Moreover, no genuine issue for trial exists as to whether plaintiff experienced "any injury" to his reputation because of the COMIC investigation. While plaintiff claims the length of the research misconduct investigation created the possibility for speculation about why it was taking so long to resolve, this issue is preempted by federal law. *See Croce,* 2024-Ohio-2138, at ¶ 38 ("claims challenging how the research misconduct proceedings were conducted, including his criticism of the length of time of the investigation, alleged conflicts of interest, and other complaints about the investigation process, are preempted by federal law."). Furthermore, plaintiff has come forward with no evidence that OSU ever made the COMIC investigation or its specific duration public in order for the mere existence of the investigation to cause any reputational harm.

{¶46} Instead, plaintiff contends the actual injury to his reputation arises from The New York Times article. Since the article was published in 2017, plaintiff claims he lost $300,000 to $400,000 in annual consulting income. Additionally, plaintiff wants OSU to reimburse him for the attorneys' fees related to the lawsuits over The New York Times article. However, The New York Times publishing an allegedly defamatory article unrelated to OSU's research misconduct investigation does not trigger OSU's obligation to perform under its University Policy and Procedures Concerning Research Misconduct and, therefore, does not control the legal analysis. *Compare Croce*, 2024-Ohio-2138, at ¶ 61. Moreover, it is undisputed that OSU was not involved with The New York Times article and that The New York Times article was published months before OSU's research misconduct investigation began.

{¶47} Additionally, the record demonstrates that at least one article has been released in a reputable science publication that details the results of OSU's COMIC investigation, including that OSU cleared plaintiff of misconduct. Furthermore, plaintiff acknowledged that he had at least one other potential employment opportunity at a cancer institute in Minnesota present itself during the pendency of the COMIC investigation, a job opportunity which would have paid a higher salary than the salary he currently makes at OSU. Put simply, defendant has met its initial burden under Civ.R. 56(C), and plaintiff has set forth no evidence that creates a genuine issue of material fact whether OSU's research misconduct investigation caused any injury to his reputation. Without evidence of reputational harm caused by the COMIC investigation, there is no injury to rectify that would require further performance from OSU under Section K.

{¶48} Consequently, the court finds that reasonable minds can come to but one conclusion that OSU did not breach its obligation to "work with" plaintiff "to rectify any injury" under Section K because OSU had discussions with plaintiff's counsel about his request for rehabilitation, and the ultimate steps to be taken are discretionary. Therefore, defendant met its initial burden under Civ.R. 56(C), and plaintiff failed to submit an affidavit or any other evidence that shows a triable issue of fact. *See generally* Civ.R. 56(E).

{¶49} For similar reasons, the court is not persuaded by plaintiff's argument that he has an indeterminate amount of damages. Instead, plaintiff's failure to submit any evidence of damages attributable to the alleged breach is another reason this case lacks triable issues of fact. *Natl. Contracting Group, Ltd. V. P&S Hotel Group, Ltd.*, 2021-Ohio-2940, ¶ 24 (10th Dist.) ("As a general rule, a party seeking damages for breach of contract must present sufficient evidence to show entitlement to damages in an amount ascertainable with reasonable certainty.”). Therefore, the court finds that reasonable minds could come to but one conclusion that plaintiff cannot prove OSU breached Section K. *See generally* Civ.R. 56(E).

Non-Disciplinary Administrative Actions

{¶50} With respect to OSU’s implementation of the four non-disciplinary administrative actions recommended by the COMIC after the research misconduct investigation, it appears the only action plaintiff continues to challenge is his removal as the endowed chair in 2021. However, plaintiff has come forward with no evidence to support that OSU breached any faculty rule by effecting his removal. *See generally Croce*, 2024-Ohio-2138, at ¶ 62-63. Furthermore, plaintiff provided no evidence that OSU’s implementation of the non-disciplinary administrative actions was uniquely distinct from the research misconduct investigation. To the contrary, plaintiff acknowledged that OSU implemented all of the non-administrative actions, including his removal as an endowed chair, as a result of the COMIC recommendations. Therefore, the court reiterates that “federal preemption barred those breach of contract claims challenging [OSU’s] implementation of the federally mandated research misconduct proceedings.” *See Croce,* 2024-Ohio-2138, at ¶ 22.

{¶51} Inasmuch as the claim is not preempted by federal law, plaintiff’s last reappointment to the endowed chair was for a four-year term effective until June 30, 2022, and was “at the discretion of the Dean of the College of Medicine.” As a general matter, a party does not breach an agreement by merely exercising its contractually conferred discretion when that agreement confers discretion on one party. *Lucarell v. Nationwide Mut. Ins. Co.*, 2018-Ohio-15, ¶ 43. Moreover, plaintiff has not claimed that he is entitled to a subsequent reappointment after the term that expired in 2022 and, for reasons already stated above, there is no evidence that compensation or any other money damages could be recovered because OSU removed him from being an endowed chair before the term had expired. Consequently, the court finds that this claim is moot. *See generally Croce v. Ohio State Univ.*, 2021-Ohio-2242, ¶ 16 (“the distinguishing characteristic of such issues is that they involve no actual genuine, live controversy, the decision of which can definitely affect existing legal relations.” Cleaned up.).

{¶52} Therefore, defendant met its initial burden under Civ.R. 56(C), and plaintiff has failed to set forth specific facts showing that there is a genuine issue for trial regarding whether defendant breached any contract with plaintiff by removing him as the endowed chair. *See generally* Civ.R. 56(E).

Declaratory Judgment

{¶53} With respect to plaintiff's complementary claim for declaratory judgment, any such claim is subsumed by plaintiff's breach of contract claims. *See Ambulatory Care Affiliates, Ltd. v. OhioHealth Corp.,* 2010-Ohio-3035, ¶ 10-12 (10th Dist.) (actions for declaratory judgment are special proceedings but when a declaratory judgment claim is asserted within the context of an ordinary civil action for breach of contract, the underlying action governs a court's analysis). Accordingly, for the same reasons discussed previously, OSU is similarly entitled to judgment as a matter of law on plaintiff's claim for declaratory judgment.

CONCLUSION

{¶54} For the reasons stated above, the court GRANTS defendant's motion for summary judgment. Even construing the evidence most strongly in plaintiff's favor, the court finds defendant has met its initial burden under Civ.R. 56(C) as to all remaining claims.

{¶55} As to the claim for nonpayment of the bonus(es) for serving as department chair, plaintiff failed to meet his reciprocal burden under Civ.R. 56(E) regarding the existence of a contract. As to the claim for nonpayment of the productivity bonus(es), plaintiff failed to meet his reciprocal burden under Civ.R. 56(E) regarding whether defendant breached the relevant language in the 2004 offer letter. Because plaintiff chose to abandon his promissory estoppel claim and did not present any evidence of a separate unambiguous promise upon which he detrimentally relied, plaintiff failed to meet his burden to respond under Civ.R. 56(E). Consequently, defendant is entitled to judgment as a matter of law on the remaining claims brought under Case No. 2020-00626JD.

{¶56} As to the claim regarding rehabilitation of his reputation, plaintiff failed to meet his reciprocal burden under Civ.R. 56(E) regarding whether defendant breached

Section K. As to the claim regarding the non-disciplinary administrative actions, plaintiff failed to meet his reciprocal burden under Civ.R. 56(E) regarding whether defendant breached any contract with plaintiff by removing him as the endowed chair. Because plaintiff failed to demonstrate triable issues of fact regarding his breach of contract claims, his complementary claim for declaratory judgment also fails. Consequently, defendant is entitled to judgment as a matter of law on the remaining claims brought under Case No. 2022-00187JD.

{¶57} As a result, the court renders judgment in favor of defendant.

LISA L. SADLER
Judge

[Cite as *Croce v. Ohio State Univ. Bd. of Trustees*, 2026-Ohio-3201.]

DR. CARLO M. CROCE Plaintiff v. THE OHIO STATE UNIVERSITY BOARD OF TRUSTEES Defendant	Case Nos. 2020-00626JD and 2022-00187JD Judge Lisa L. Sadler JUDGMENT ENTRY

IN THE COURT OF CLAIMS OF OHIO

{¶58} For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. All previously scheduled events are VACATED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

LISA L. SADLER
Judge

Filed July 22, 2026
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