

FEB 09 2022

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21-7534

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Alan L Gallagher — PETITIONER
(Your Name)

vs.

Capella University, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Alan L. Gallagher

(Your Name)

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(Address)

Canby, OR 97013

(City, State, Zip Code)

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(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

Are elements of contract properly pled (to survive motion to dismiss for failure to state cause of action)?

Should universities have immunity under doctrines of Contract Disclaimer and Educational Malpractice, where they themselves enforce contracts, and when exceptions are claimed for reciprocity, and for arbitrary, capricious, irrational, and retaliatory behavior?

Are claimed exceptions (for arbitrary, capricious, irrational, and retaliatory behavior) a matter of fact for determination by jury?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows: Capella University, Capella Education Company

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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

The caselaw is clear that the relationship between university and student is one of contract.

STATUTES AND RULES

OTHER

Healy, Maurice (1939). The Munster Circuit.

The Cork Assizes once contributed a leading case relating to the sale of goods: *Wallis v Russell*. It was tried before Pether O'Brien, who greatly enjoyed himself. Mrs. Wallis has brought her action against Messieurs Russell, who were well-known merchants in Cork, in respect of a crab which had been purchased for her supper, and which made her seriously ill. In those days, such an action was not common, but Mrs. Wallis happened to be the mother of one of the most original and courageous solicitors in Cork, who at a later date distinguished himself by having his office premises and their garden, situated in the main street of the town of Middleton, declared to be a holding that was partly agricultural or pastoral, and thus entitled to the benefits of the Irish Land Acts. To a mind of such daring an action about a diseased crab would be a trifle. And so the case was launched. The whole point was whether the salesman had warranted the crab to be fit for human consumption. There is a section of the Sale of Goods Act which deals with the matter; and a young lady went into the box to describe her purchase of the crab.

"I am a companion to Mrs. Wallis," she said. "I went out to buy her some little tasty thing that she might fancy for her tea; and I suddenly thought of a crab. I knew that Russell's had cooked crabs, so I went in there, and asked the shopman for a nice-cooked crab, telling him that I wanted it for Mrs. Wallis's supper, so as to make known to him the purpose for which it was to be used."

Pether pricked up his ears. "You said that?" He asked. "Yes, My Lord." "In another very wordy?" "Yes, My Lord." Pether reflected a moment. "Remarkable the thorough education it takes." He commented. "Go on." The young lady took up her tale. "Well, then, when I told him that, he looked at the crabs, and he selected one and gave it to me. So I, relying on his skill and judgment, took it—"

"That's what you said," cried Pether. "You said that wordy although." "Yes, My Lord." "Where were you educated?" "At the Ursuline Convent, Blackrock, My Lord." "And then when have the Ursuline Thithsters included Thection Fourteen of the Thale of Goodth Act in their curriculum?" "I don't know, My Lord; I did not get beyond domestic economy." "Ah=h. That's where it is; they tell you, 'Never buy anything without telling the shopman what it is for, so that you can say that you have relied upon his skill and judgment.'" "Yes, My Lord." "What admirable nonsense." Said Pether. "Go on." But his argument went for naught; the young lady's story was implicitly accepted by the jury; and Mrs. Wallis received such comfort as the law could afford her, and set a headline for the example of other persons unfortunate enough to poison themselves with such food.

So too, I was taught "by the Nuns," and enquired specifically of Capella and was assured that their Ph.D. program, with its Milestones and Mentor, would be specifically available and suited to me. Whatever their general "Disclaimers," they made this express representation to me, over and over again.

IN THE
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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

x.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Jan 06, 2022.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 6, 2022, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

Petitioner enrolled as a Ph.D. student at Capella University, relying upon its promise/inducement of a special program (Milestone Program) to support his success. Petitioner had previously studied at the University of Washington, but did not complete the dissertation there. Plaintiff relied upon this inducement/promise and spent over four years and over \$140,000 (performance and consideration) to advance in this program, completing over 140 credits at 3.88 GPA and dissertation, but his dissertation was not granted Milestone 11 approval (normally pro forma), and Petitioner was dismissed from Capella. Petitioner sued for breach of contract, but case was dismissed for failure to state cause of action. Capella relied upon doctrines of Contract Disclaimer and Educational Malpractice to deny cause of action. Petitioner asserted that doctrines were invalid but, even if applied, contained exceptions for arbitrary, capricious, irrational, and retaliatory behavior, which he alleged. His Petition allegations were supported by an affidavit of facts.

Petitioner alleged, in his petition and accompanying affidavit, the core elements of contract: inducement/promise, agreement/enrollment, consideration/performance, breach of contract, and damages (loss of money, failure to receive Ph.D.). He set out in specific detail instances of arbitrary, capricious, irrational, and retaliatory behavior by Capella in denying Milestone 11 approval (in spite of the recommendations of Capella's own faculty and experts), normally but a pro forma step to complete the degree. In spite of Capella's Contract Disclaimer, Petitioner had engaged with its staff and professors, from the beginning and throughout the program, relying upon their specific promises that he could rely upon the Milestone Program.

Capella itself believes and asserts there is a contract, including seeking to collect from Petitioner about \$600 in unpaid tuition and fees (assigned to a collection company and adversely affecting Petitioner's credit record).

REASONS FOR GRANTING THE PETITION

American Universities, including Capella, enter into contracts with students, involving millions of students and millions of dollars, but are granted immunity with respect to academic decisions, using both Contract Disclaimers and Educational Malpractice doctrines. These doctrines are wrong. However, assuming they are justified, It is especially wrong when universities enforce the same contracts to collect monies from students, and when decisions are not really "academic," but based upon exceptions which include arbitrary, capricious, irrational, and retaliatory behavior (that is, not academic behavior). Universities may not equitably deny contracts and enforce them.

When a university asserts a "Contract Disclaimer" clause, it is saying that its decisions are not bound by standards, and are therefore not really "academic" and deserving of immunity. However, the caselaw is clear that there are exceptions for arbitrary, capricious, irrational, and retaliatory behavior by the university (also not "academic"), which are herein alleged, and which should be fact questions for a jury, not a basis to dismiss without trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Alan L. Gallagher



Date: February 2022