

VENTURA
SUPERIOR COURT
FILED

SEP 17 2024

BRENDA L. McCORMICK
Executive Officer and Clerk
By: [Signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

ELTON WILLIAM GALLEGLY and JANICE) Case No.: 202100560108CUBC
GALLEGLY,)
)
Plaintiffs,) STATEMENT OF INTENDED DECISION
)
)
vs.)
)
)
CALIFORNIA LUTHERAN UNIVERSITY,)
CHRIS KIMBALL, and LORI E. VARLOTTA,)
)
)
Defendants.)

This matter came on calendar for trial before the undersigned Court sitting without a jury on July 15, July 16, July 17, July 30, July 31, August 1, August 2, August 6, and August 7, 2024. Plaintiff Elton Gallegly was represented by Mr. Charles Slyngstad. Defendants California Lutheran University, Christopher Kimball and Lori Varlotta were represented by Messrs. Daniel Jannsen and Matthew Burris. Testimony was taken, evidence was received, and the matter was argued by counsel. The case was thereupon taken under submission by the Court, which now issues its Statement of Intended Decision.

The case involves a dispute between Elton Gallegly and California Lutheran University regarding an effort by both to establish the Gallegly Center for Public Service and Civic Engagement on the CLU campus in Thousand Oaks. By way of background, Elton Gallegly is a

1 now retired United States Congressman from Simi Valley and surrounding areas. Mr. Gallegly
2 was first elected to Congress in November of 1987 and consistently re-elected for 12 additional
3 terms until his decision to retire in 2012. California Lutheran University is a private nonsectarian
4 university affiliated with the Evangelical Lutheran Church in America.

5 Before his retirement from Congress, Mr. Gallegly was looking for a place to house his
6 Congressional papers. At one point, he was approached by Mr. Richard Rush, the President of
7 California State University Channel Islands. Gallegly also spoke with Charles Jelloian, Stephen
8 Whatley, and Christopher Kimball from CLU. An Agreement was reached with CLU for the
9 establishment of the Gallegly Center on the CLU campus. From Mr. Gallegly's perspective this
10 included a package which included a replica of his Congressional office, and the archiving of his
11 Congressional papers. From CLU's perspective, the scope of the agreement did not include a
12 replica of Gallegly's Congressional office. The parties have been unable to resolve their
13 differences, and seek a determination of their rights and duties under what each claim is a
14 contract between them. That is exacerbated by the fact that there is no single document entitled
15 "Contract" which addresses the issues. There are certain writings, but also contentions based on
16 the conduct and performance of the parties which each side contends create (or do not create)
17 legal obligations and responsibilities.

18 Before proceeding any further, the Court wishes to establish that the Complaint filed by
19 Ms. Gallegly contains a number of causes of action, one of which is declaratory relief. There are
20 others, however, including breach of contract, breach of fiduciary duty, breach of the covenant of
21 good faith, ultra vires acts, unfair business practices and appropriation of image. Some of these
22 other causes of action entitle the litigants to a jury. The decision which the Court making here is
23 limited to the declaratory relief cause of action (for which a jury is not permitted.)

24 Two of the primary documents in this case are the Deposit Agreement executed in 2013
25 (defense exhibit 9), and the October 2017 Gift Agreement (defense exhibit 3) [Exhibits were
26 received into evidence from both sides, and there is duplication. The description of an exhibit as
27 being "plaintiff" or "defense" has no significance beyond identifying the exhibit.]

28 In the Deposit Agreement, Mr. Gallegly agreed to deposit with CLU "certain papers and

1 related materials" from his Congressional career and also the desk credenza and furniture from
2 his Congressional office. CLU agreed to accept these materials in the library at CLU, and to
3 "arrange, preserve, and catalog" these papers according to "generally accepted principles of
4 archival administration and practice." The Deposit Agreement further stated that these materials
5 would be used as part of the establishment of the "Elton Gallegly Center for Public Policy and
6 Civic Engagement." This exhibit says nothing at all about a replica of Mr. Gallegly's
7 Congressional office. It does say that Mr. Gallegly will join with CLU in seeking donations of
8 not less than \$3.0 million as an endowment to fund the operations of the Gallegly Center.

9 The second written document is the October 2017 Gift Agreement (defense Exhibit 46.)
10 This required Ms. Gallegly to give "irrevocably" to CLU all of the Gallegly materials i.e. those
11 materials described in the Deposit Agreement, and to archive them according to "generally
12 accepted principles of archival administration and practice," and to hold them in the CLU library.
13 Like the Deposit Agreement, this document says nothing at all about a replica of Mr. Gallegly's
14 Congressional office. This was later modified whereby the parties agreed that certain materials
15 were on a loan to CLU, and not an irrevocable gift.

16 Neither of these documents has an integration clause in the sense of declaring that their
17 contents comprise the universe of agreements between the parties. They do, however, relate to
18 the same subject - the Gallegly Center.

19 What the parties do not disagree on is that the Gallegly Center when fully functional
20 would include: 1) an annual scholarship for a deserving student to obtain a masters degree in
21 Public Policy and Administration, 2) an annual distinguished speaker to talk about public
22 service, and 3) the archiving of Mr. Gallegly's Congressional papers. It was also agreed between
23 the parties that CLU would not independently fund the operation of the Gallegly Center. Its
24 operation would be financed by the \$3.0 million the parties had agreed to raise for that purpose.
25 Other aspects of the Gallegly Center are not spelled out in the documents, but can be determined
26 from the conduct of the parties. The conduct of the parties is recognized as a valid means of
27 determining what the words of a contract mean to the parties, provided that the conduct of the
28 parties occurred before any disagreement between the parties. This is construction by conduct as

1 found in CACI 318. A jury instruction is not in and of itself legal authority. The citations cited in
2 support of that instruction are citable legal authority. The Court has read each of the citations to
3 CACI 318. *So. Pacific Transportation v. Santa Fe Pacific Pipelines*, 74 Cal.App.4th 1232; *So.*
4 *California Edison v. Superior Court*, 37 Cal.App.4th 839; *Kennecott v. Union Oil*, 196
5 Cal.App.3d 1179. These cases support the language of the instruction.

6 The areas of performance not mentioned in the Deposit Agreement and the Gift
7 Agreement, but nonetheless have been adopted by the parties through their conduct as part of the
8 Gallegly Center include the speaker series which began with Condoleeza Rice, the annual award
9 of a scholarship to a qualified student (six such scholarships were awarded), and the replica
10 office. The last of these is the focus of this litigation, and needs close examination.

11 Plaintiff's exhibit 2 is an undated promotional brochure prepared by CLU. On page 5 it
12 refers to "Highlights" of the Gallegly Center, and states that Mr. Gallegly's House of
13 Representative desk and other furniture will be on display for public viewing. Plaintiff's Exhibit
14 4 is the minutes of the Board of Regents meeting of October 13, 2017 which authorizes the
15 construction of the Gallegly Center at the Pearson Library, which will include a replica of Mr.
16 Gallegly's Congressional office. This recommendation was adopted by CLU administration.
17 Plaintiff's Exhibit 329 is a confidential description by CLU of the Gallegly Center which states
18 on page 3 that a working replica of Mr. Gallegly's Congressional office will be created. To
19 accomplish this, an architect, Mr. Paul Beigh, was retained and prepared plans for the Gallegly
20 Center which included Gallegly's office (plaintiffs Exhibit 345.) The result was that the replica
21 office was created and in place as of April of 2018. To complete the picture, it was dismantled in
22 January of 2022 because it did not leave sufficient space for the storage of Gallegly's papers
23 after they had been archived. If the evidence that only one of these factors was accomplished, the
24 conclusion that the replica office was an outgrowth of the original documents would be a reach.
25 However, taking them all together, none of those factors was created from whole cloth, or on a
26 whim. They originate with the Gift Agreement and the Deposit Agreement. Is anybody seriously
27 contending that the replica office was the result of a spontaneous idea separate from the Gift
28 Agreement and the Deposit Agreement?

1 One of the critical underpinnings of the Gallegly Center was that it needed to be self-
2 supporting, and would not be underwritten by CLU. The hope was that Mr. Gallegly's reputation
3 in the community, and his political donors would be sufficient to raise the \$3.0 million recited in
4 the Gift Agreement. This has not been the case, and has caused the project to be at a standstill.
5 What has been accomplished is the modification to the Pearson Library to create a space for the
6 Gallegly Center, and the archiving of Mr. Gallegly's Congressional papers. There is, however, no
7 current money to fund the fellowships, or the speaker series.

8 The Court has been asked to determine if there is a contractual basis for the establishment
9 of a replica of Mr. Gallegly's Congressional office. The answer to that is in the affirmative for
10 the reasons stated. The *sine qua non* for this, however, is funding. Acrimony has developed
11 between the parties, the culmination of this was first, the Gallegly's letter writing campaign
12 which was critical of the efforts being made by CLU, and then the present litigation.

13 The Court has no power to compel the parties to bury the hatchet, which is necessary
14 before this project can be resurrected. There is yet no persuasive evidence that either side has
15 abandoned their obligation to raise the money to support this project. That is more likely an area
16 of inquiry for the other causes of action, e.g. accounting and/or breach of contract.

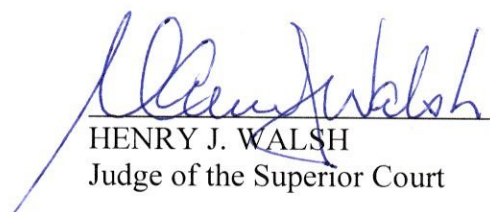
17 As an advisory comment, however, the Court does offer the opinion that there is no
18 evidence of *ultra vires* conduct by Ms. Varlotta or Mr. Kimball. Their participation was entirely
19 within their respective scopes as President of CLU.

20 Elton Gallegly is the prevailing party, and is entitled to his statutory costs of suit. Counsel
21 for Gallegly is directed to prepare and to submit a form of Judgment.

22 This Statement of Intended Decision shall become the Court's Statement of Decision
23 unless objections are filed within the statutory time. Any party making objections is directed to
24 concurrently file proposed findings on any issue to which an objection is made.

25 Clerk to give notice.

26 Dated: September 17, 2024

27 
HENRY J. WALSH
28 Judge of the Superior Court

PROOF OF SERVICE
CCP § 1012, 1013a (1), (3) & (4)

STATE OF CALIFORNIA)
COUNTY OF VENTURA) ss.
)

Case Number: 202100560108CUBC

Case Title: Gallegly v. California Lutheran University, et al.

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 800 S. Victoria Avenue, Ventura, CA 93009. On the date set forth below, I served the within:

STATEMENT OF INTENDED DECISION

On the following named party(ies)

SEE ATTACHED SERVICE LIST

____ BY PERSONAL SERVICE: I caused a copy of said document(s) to be hand delivered to the interested party at the address set forth above on _____ at _____ a.m./p.m.

 X BY MAIL: I caused such envelope to be deposited in the mail at Ventura, California. I am readily familiar with the court's practice for collection and processing of mail. It is deposited with the U.S. Postal Service on the dated listed below.

____ BY FACSIMILE: I caused a courtesy copy of said documents to be sent via facsimile to the interested party at the facsimile number set forth above at ____ from telephone number ____.

____ BY ELECTRONIC SERVICE (to individual person): By electronically transmitting a copy/courtesy copy of the document(s) listed above to the email address(es) of the person(s) set forth above/ on the attached service list. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed on **September 17, 2024**, at Ventura, California.

By: _____

H. McIntyre, Court Judicial Secretary

SERVICE LIST

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