

No. 24-CV-0957



DISTRICT OF COLUMBIA COURT OF APPEALS

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DARRYL JENNINGS, JR.,

Appellant,

v.

HOWARD UNIVERSITY, et al.,

Appellees.

ON APPEAL FROM A JUDGMENT OF THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
No. 2022-CA-003118B

APPELLANT'S CORRECTED OPENING BRIEF

David A. Branch, Esq.
Law Office of David A. Branch & Associates, PLLC
1120 Connecticut Avenue, NW
Suite 500
Washington, DC 20036
(202) 785-2805 phone
(202) 785-0289 fax

TABLE OF CONTENTS

Certificate as to Parties, Rulings, and Related Cases	i
Table of Authorities	ii
Glossary	iv
Statement of Jurisdiction	1
Statement of the Issues	2
Statement of the Case	3
Statement of Facts	4
Summary of Argument	14
Argument	15
I. Standard of Review	15
II. The Trial Court Erred in Dismissing Mr. Jennings’ Claims for Negligent Supervision, Negligent Retention, and Tortious Interference with Business Relations	16
III. The Trial Court Erred in Granting Summary Judgment on Mr. Jennings’ Promissory Estoppel and Breach of Contract Claims	16
IV. The Trial Court Erred in Limiting the Contract Claim and Excluding Economic Damages	24
V. The Trial Court Erred in Concluding Mr. Jennings’ Economic Damages Were Speculative and Unsupported	26
Conclusion	29

Certificate of Compliance 30

Certificate of Service 31

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Court of Appeals Rule 28(a)(2)(A), Appellant Darryl Jennings makes the following certificate of counsel:

(A) Parties and Amici. Appellant Darryl Jennings, Jr. (“Mr. Jennings”), and Appellees Howard University (“University”) and Dr. Gbadebo Moses Owolabi (“Dr. Owolabi”) collectively referred to as (“Appellees”), are the only parties who appeared before the Superior Court of the District of Columbia (“Trial Court”).

Both parties are appearing in this Court related to this matter.

(B) Rulings Under Review. This appeal challenges the Trial Court Judge Shana Frost Matini’s March 18, 2024, order granting in part Appellees’ motion for summary judgment. The September 12, 2024, order limiting Mr. Jennings’ damages for breach contract claim to a narrow theory with nominal damages only, excluding economic loss testimony.

(C) Related Cases: This case was previously dismissed for procedural reasons but reinstated. There are no related cases pending before this Court.

/s/ David A. Branch

David A. Branch
D.C. Bar No. 438764
Law Offices of David A. Branch &
Associates, PLLC
1120 Connecticut Avenue, NW
Suite 500
Washington, D.C. 20036
(202) 785-2805

TABLE OF AUTHORITIES

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Brown v. Argenbright Sec., Inc., 782 A.2d 752 (D.C. 2001) 21

Byrd v. Jackson, 902 A.2d 778 (D.C. 2006) 15

Camarda v. Certified Fin. Planner Bd. of Standards, Inc., 672 F. App'x 28 (D.C. Cir. 2016) 16

Chappell-Johnson v. Powell, 440 F.3d 484 (D.C. Cir. 2006) 15

Chenari v. George Wash. Univ., 847 F.3d 740 (D.C. Cir. 2017) 17

Choate v. TRW, Inc., 14 F.3d 74 (D.C. Cir. 1994) 20

District of Columbia v. Chinn, 839 A.2d 701 (D.C. 2003) 23

Doe v. Am. Univ., No. 19-cv-03097 (APM), 2020 U.S. Dist. LEXIS 171086 (D.D.C. Sept. 18, 2020) 17

Garcia v. Llerena, 599 A.2d 1138 (D.C. 1991) 25

Hawthorne v. Canavan, 756 A.2d 397 (D.C. 2000) 25

Henderson v. District of Columbia, 493 A.2d 982 (D.C. 1985) 15

Howard Univ. v. Best, 484 A.2d 958 (D.C. 1984) 28

Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm'n, 677 A.2d 46 (D.C. 1996) 23

Morrison v. MacNamara, 407 A.2d 555 (D.C. 1979) 15

Newmyer v. Sidwell Friends Sch., 128 A.3d 1023 (D.C. 2015)	25
Nugent v. Unum Life Ins. Co. of Am., 752 F. Supp. 2d 46 (D.D.C. 2010)	17
O'Connor v. District of Columbia, 921 A.2d 853 (D.C. 2007)	15
Pence v. United States, 316 U.S. 332 (1942)	27
Pioneer Inv. Servs. Co. v. Brunswick Assocs., 507 U.S. 380 (1993)	27
Simard v. Resolution Trust Corp., 639 A.2d 540 (D.C. 1994)	20
Tsintolas Realty Co. v. Mendez, 984 A.2d 181 (D.C. 2009)	16
Wright v. Howard Univ., 60 A.3d 749 (D.C. 2013)	17, 19

GLOSSARY DEFINING ABBREVIATIONS AND ACRONYMS

SJ – Summary Judgment

D.C. – District of Columbia

Title VII – Title VII of the Civil Rights Act of 1964

STATEMENT OF JURISDICTION

The D.C. Court of Appeals has jurisdiction over this appeal pursuant to D.C. Code § 11-721. The appeal arises from the March 18, 2024, (Order granting in part and denying in part Appellees' motion for summary judgment). The trial court denied summary judgment on Mr. Jennings' breach of contract claim relating to Dr. Hubsch's preparation and grading of the Mathematical Methods exam, and the September 12, 2024, order limiting Mr. Jennings' damages for the breach contract claim to a narrow theory with nominal damages only, excluding economic loss testimony. The trial court had jurisdiction pursuant to D.C. Code § 11-921. These rulings collectively disposed of Mr. Jennings' claims, rendering the judgment final and appealable.

STATEMENT OF THE ISSUES

1. Whether the trial court erred in granting summary judgment on Mr. Jennings' breach of contract and promissory estoppel claims by misinterpreting academic policies and ignoring Mr. Jennings' evidence of reliance and damages.

2. Whether the trial court erred in granting the motion for summary judgment on Mr. Jennings' claims of negligent supervision, negligent retention, and tortious interference with business relations, where Mr. Jennings alleged that faculty members acted outside University policy and with discriminatory or retaliatory motive.

3. Whether the trial court erred in excluding Mr. Jennings' claim for economic damages on the grounds that it was speculative or inadequately supported, despite his testimony that he experienced career delay, lost time, and reputational harm.

STATEMENT OF THE CASE

Mr. Jennings was a doctoral candidate in the Department of Mechanical Engineering at Howard University. Mr. Jennings sat for his comprehensive examinations—required for doctoral candidacy—but failed multiple sections on two attempts. A key portion of these exams, the Mathematical Methods section, was prepared and graded not by a department faculty member, but by Dr. Tristan Hubsch, a Physics professor. University policy specified that comprehensive exams were to be administered by departmental faculty. Mr. Jennings filed suit, asserting that his dismissal from the Ph.D. program violated the University’s policy, deprived him of a fair academic evaluation, and was exacerbated by negligent supervision and bad faith conduct. The University and Dr. Owolabi moved to dismiss all claims. On March 18, 2024, the trial court granted partial summary judgment, holding the only surviving theory was whether the policy requiring departmental administration of exams was breached. The trial court determined that the only triable issue was whether the policy requiring department faculty to administer exams was violated—and if so, whether Mr. Jennings was entitled to nominal damages. The trial court further determined exclusion of all evidence of economic damages, based largely on a discovery dispute concerning interrogatory responses. Mr. Jennings timely appealed.

STATEMENT OF FACTS

In 2017 Mr. Jennings enrolled as a Ph.D. student in the Mechanical Engineering Doctoral program at Howard University. JA0530 and JA0563. At the time he enrolled in Howard University's doctorate program, Mr. Jennings understood that Howard University would abide by published procedures for completion of the doctorate program, including Comprehensive Exam Procedures approved by the faculty of the Department of Mechanical Engineering on September 19, 2013, and specifically that the Graduate Program Director would convene a Comprehensive Examination Committee composed of "instructors of record for the courses covered in the written examination" and the student's research advisor. JA0531 and JA 0563. Dr. Smith told Mr. Jennings that the Comprehensive Examination on each subject would be administered by the professors who taught the courses. Id. and JA 0098.

When he enrolled at Howard University, Mr. Jennings was assigned to Dr. Sonya Smith as a research advisor. JA 0531 and JA0563. He performed research for Dr. Smith and his tuition and stipend was paid from Dr. Smith's grants. Id. Dr. Gbadebo Moses Owolabi, a native of Nigeria, was a professor in Howard's Mechanical Engineering program and the Graduate Program Director for the Department of Mechanical Engineering when Mr. Jennings enrolled at Howard

University. Id. Mr. Jennings later learned that Dr. Owolabi harbored misogynistic animus against Dr. Smith and had failed several students who did not work with him as their research advisor and failed all the students who were assigned to Dr. Smith as their research advisor. Id.

Mr. Jennings had a very uncomfortable encounter with Dr. Owolabi: Mr. Jennings, a heterosexual male, was present in Dr. Owolabi's office to discuss the results of the exam and during the course of that meeting, Dr. Owolabi demanded Mr. Jennings to come and sit next to him on a sofa. JA0531-0532 and JA 0564. Mr. Jennings refused to do so and made it clear that he was offended by the suggestion. Id. After this incident, Dr. Owolabi began to take actions to cause Mr. Jennings' discharge from the doctorate program. Id.

Between 2017 and 2019, Mr. Jennings did well in all of his course work. JA0532 and JA 0564. He obtained an "A" grade in some of the most difficult subjects-Advanced Fluid Mechanics, Advanced Heat Transfer, and Mathematical Methods in Physics I & II. Id. He also performed well in and passed all other required core courses for the Ph.D. program in mechanical engineering including Advanced Dynamics, Advanced Thermodynamics, and Continuum Mechanics. Id.

In fall 2019, Mr. Jennings was required to take the first Comprehensive

Written Examination. JA0532 and JA0564. Mr. Jennings was required to take the fall 2019 examination in a small conference room with two other graduate students. Id. Dr. Owolabi determined that an individual who was not an “instructor of record” for the courses covered in the written examination, Advanced Dynamics, and was not Mr. Jennings’ research advisor would administer the examination in this subject. JA0532 and JA 0564-0565. The exam given in Fall 2019 was administered by an examiner who was not an instructor of record for the courses covered, including an examiner, Dr. Grant Warner, who had never taught the subject before, much less taught Mr. Jennings, and did not provide information to Mr. Jennings on the material to be covered. Id. and JA 0104. Dr. Smith found this to be problematic and irregular. JA 0593 and JA0605 (Smith Dep. 1, at 84:15-89:8; 129:4-15).

During the examination, the individual administering the examination stood close in proximity to Mr. Jennings, invading his private space and making him uncomfortable. JA0532-0533 and JA0565. Further, the individual administering the examination accused the other student taking the examination of cheating and berated the student for fifteen minutes during the examination. JA0533, JA0565 and JA 0607 (Smith Dep. 1, at 139:3-140:2). Mr. Jennings was later informed that he received a failing score on the examination, but Howard University refused to provide him a copy of his graded examination. JA0533 and

JA0565. Dr. Owolabi, told Mr. Jennings to audit his course, Continuum Mechanics, which Mr. Jennings had previously taken with Dr. Owolabi and passed. Id. Mr. Jennings complied but Dr. Owolabi failed him on the Continuum Mechanics exam again in the second attempt in March 2020 and did not show him the results of the exam. Id.

On March 25, 2020, Mr. Jennings took the Comprehensive Written Examination which had its format arbitrarily changed. JA0533 and JA0565. The Continuum Mechanics exam was switched from an open-book exam to a closed-book exam. Id. The examiner of Advanced Dynamics in Spring 2020, Dr. Grant Warner, was not the “instructor of record”; had not taught Mr. Jennings the course; had never taught this subject before at Howard University; and did not provide any information pertaining materials covered. Id. The examiner of Advanced Thermodynamics, Dr. Nadir Yilmaz, in Spring 2020 was not the “instructor of record”; had not taught Mr. Jennings the course; and did not provide any information pertaining materials covered. JA0533 and JA0565- JA0566.

The Mathematical Methods section of Mr. Jennings’ exams was prepared and graded by Dr. Tristan Hübsch, a faculty member from the Physics Department. JA0100. Mr. Jennings failed that subject in the Fall 2019 and Spring 2020 Comprehensive Examinations. JA 0183 (Jennings Tr. 103-04). On March 31, 2020,

Howard University sent Mr. Jennings his exam results. JA0533 and JA0566. These results arbitrarily deleted his score as disclosed in his previous notice but did show that he again had failed four of the six subjects, including a subject that Mr. Jennings had earned an “A”. JA0533-0534 and JA0566. Mr. Jennings was refused access to his graded exams to see where and how he had given wrong responses. JA0534 and JA0566.

On May 29, 2020, Howard University informed Mr. Jennings that he was suspended by the Graduate School’s Interim Dean Dana Williams. JA0534 and JA0566. On June 1, 2020, Mr. Jennings filed an appeal to the graduate school, claiming along with the unfair, unprofessional, unprocedural, and arbitrary exam process, that he had been discriminated against for being an African American male, the only one in the program to be dismissed. *Id.* Howard University acknowledged that Dr. Owolabi was the subject of a series of complaints. JA0114-0115 (Defendant’s Statement of Material Facts at ¶¶ 130, 133-34).

On July 26, 2020, Mr. Jennings was invited to attend a mediation to appeal the department’s decision. *Id.* Howard University refused to provide any written guidelines as to the conduct at the mediation, or regulate the process, and refused to allow anyone to accompany Mr. Jennings to the mediation. *Id.* The matter was not resolved at mediation as Howard University engaged in a condescending,

insulting, and disrespectful manner. Id.

After mediation, Howard University offered to create an ad hoc committee proposed by the Chair of Mechanical Engineering Department, Dr. Nadir Yilmaz, without citing any authority to create such a committee to address Mr. Jennings' concerns. JA0534 and JA0566. On September 7, 2020, Mr. Jennings appealed to the Graduate School's Student Grievance Committee to conduct a formal hearing on his objections to the exam process and his allegations of discrimination. JA0535 and JA0567. The hearing was set for September 23, 2020. Id. Howard University did not send Mr. Jennings notice of the hearing by certified mail as required by its own rules. Id. The Committee ultimately denied Mr. Jennings' appeal and refused to disclose the reasons for its recommendation of Mr. Jennings' dismissal. Id.

After Mr. Jennings and other students protested Howard University's failure to follow its own guidelines, Provost Anthony K. Wutoh replaced the Comprehensive Exam Procedures on October 23, 2020, with a Memorandum, entitled "Graduate Comprehensive Examination—Dept. of Mechanical Engineering." JA0535 and JA0567. The new policy changed the requirement that the examination be administered by the instructors of record with a new requirement that "The questions should not be instructor specific; rather, they

should be designed based on a generally accepted standard of competency for the subject area.” Id.

Mr. Jennings appealed the decision to dismiss him from the program in conformance with the Graduate School Rules & Regulations Article III Section 2, Student Handbook 2020-2021 Section III. JA0535 and JA0567. Mr. Jennings believed that the Grievance Committee made recommendations regarding reinstating him as a Ph.D. student in the department based on the Grievance hearing. Id. Howard University refused to provide Mr. Jennings with the Committee’s recommendation. Id. Howard University conditioned disclosure of the Grievance Committee’s recommendations in exchange for a release of all of Mr. Jennings’ prospective claims. JA0569.

The Interim Graduate School Dean Dana Williams thereafter initiated an arbitrary review process of Mr. Jennings’ written examinations in the Comprehensive Examinations taken in the fall of 2019 and spring of 2020. JA0535-0536 and JA0567-0568. Based on this arbitrary review process, the Interim Graduate Dean made a final decision to deny the appeal and dismiss Mr. Jennings from Howard University. JA0536 and JA0568.

Mr. Jennings then followed the published grievance procedures and filed an appeal for readmission on June 1, 2020, but on December 11, 2020, the Interim

Graduate Dean notified Mr. Jennings that his appeal was denied and that the matter was closed. JA0536 and JA0568. Howard University admitted that its reasoning was based on an unauthorized double-blind review process that allegedly assessed Mr. Jennings' performance in the Department. *Id.* Howard University refused to disclose the actual deliberations of the double-blind review process or otherwise explain how the decision was reached. *Id.*

Mr. Jennings filed suit, asserting that Howard University violated its own academic rules and procedures, and that the involvement of non-departmental personnel in preparing and grading his exam unlawfully deprived him of academic standing. JA0014-0029. He also alleged breach of contract, promissory estoppel/detrimental reliance, negligent supervision and retention, and tortious interference with business relations against the University and Dr. Owolabi. *Id.* Howard University and Dr. Owolabi filed a Motion to Dismiss Counts II-IV of Mr. Jennings' complaint, pursuant to Super. Ct. Civ. R. 12(b)(6) for failure to state a claim. JA0076-0077. The trial court issued an Order on November 29, 2022, denying dismissal of Counts II-IV and denying dismissal of Mr. Jennings' claims for emotional distress and punitive damages. JA0079, JA0081, and JA0083-JA0084.

During discovery, Mr. Jennings was asked to describe the basis for his

economic loss. JA0503. He identified lost time, delayed professional advancement, and career disruption as direct consequences of his improper dismissal. JA 0725 and JA0736-0737. Mr. Jennings lost four years of progress towards a Ph.D. in Mechanical Engineering at Howard University and had to begin a new doctorate program at the University of Virginia. Id. Mr. Jennings also provided the following supplemental response in regards to describing factual basis for damages claim as “...Being expelled is an extreme mark of shame and an academic scar on my permanent record...To reach the highest level of academic study and to be deemed not worthy, hurt on a level that have never experienced before as a researcher.” JA0504.

The University and Dr. Owolabi filed a motion for summary judgment and Mr. Jennings filed his opposition on November 29, 2023. JA0529-JA0619. On March 18, 2024, the trial court issued an Order, granting in part and denying in part the motion for summary judgment. JA0675-JA0676. Appellees later filed an Opposed *In Limine* Motion requesting Mr. Jennings be precluded from presenting evidence or argument at trial in support of any claim for economic-loss damages, seeking to enforce the trial court’s May 18, 2023, ruling that Mr. Jennings would be limited to his interrogatory responses regarding economic loss damages at trial because the responses referred to emotional distress damages but did not describe that factual basis for the claim, or provide any computations. JA0677. Mr.

Jennings filed his opposition arguing that at the motions hearing, Mr. Jennings argued that as a result of being dismissed from the Ph.D program, he was delayed in obtaining his degree and had to enroll in another program; he lost wages from the delay in completing his degree and the stigma from being dismissed from the program.” JA0762-0763. Mr. Jennings further asserted his entitlement to present to the jury all damages that flow from the breach of the contract, not just nominal damages. JA0763.

On September 12, 2024, the trial court ruled that Mr. Jennings failed to articulate a factual basis for claiming economic damages and regarded Mr. Jennings’ interrogatory responses as insufficient and precluded him from introducing any economic-loss evidence at trial. JA0766-0769. Mr. Jennings filed a timely notice of appeal. JA0770-0771.

SUMMARY OF THE ARGUMENT

The trial court improperly granted summary judgment on Mr. Jennings' breach of contract and promissory estoppel claims. Mr. Jennings alleged that the University and Dr. Owolabi breached the implied covenant of good faith and fair dealing by performing the contractual obligations in bad faith or in an arbitrary and capricious manner and breached the contractual obligations by blocking Mr. Jennings from fulfilling his contract obligations

Mr. Jennings relied on Howard University's published academic policies and faculty representations, including those concerning who would administer comprehensive examinations. The trial court misapplied the law governing contractual obligations in the academic context and failed to credit material factual disputes regarding the meaning and application of those policies.

Also, the trial court erred in dismissing Mr. Jennings' tort claims for negligent supervision, negligent retention, and tortious interference with business relations by overlooking specific factual allegations that the University knowingly retained and failed to supervise Dr. Owolabi and other faculty members despite actual or constructive knowledge of their bias and/or retaliatory conduct. Mr. Jennings also alleged that Dr. Owolabi acted outside the scope of his official duties when he sabotaged Mr. Jennings' progress in the Ph.D. program, constituting tortious interference with his educational relationship with the University.

Further, the trial court wrongly excluded Mr. Jennings' economic damages, relying on an overly rigid interpretation of his interrogatory responses. Contrary to the trial court's conclusion, Mr. Jennings articulated a well-supported theory of harm grounded in delayed academic progress, lost professional opportunities, and reputational injury. The trial court's decision to bar economic-loss evidence denied Mr. Jennings a fair opportunity to prove his damages at trial.

Finally, the trial court's rulings improperly narrowed the case to a single issue—whether Mr. Jennings was entitled to nominal damages based on the administration of the Mathematical Methods exam by non-departmental faculty. This framing excluded the broader pattern of procedural violations and retaliatory conduct that Mr. Jennings alleged throughout the litigation. As a result, the trial court erroneously resolved factual disputes that should have been presented to a jury. Reversal is warranted so that Mr. Jennings may pursue his tort and contract claims and recover the full extent of his damages.

ARGUMENT

I. Standard of Review

The District of Columbia Court of Appeals reviews the grant of summary judgment de novo. *Henderson v. District of Columbia*, 493 A.2d 982, 987 (D.C. 1985). Summary judgment is appropriate only when the pleadings, depositions,

answers to interrogatories, and admissions on file, together with any affidavits, 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.

A genuine issue of material fact exists if “a reasonable juror could find for the non-moving party.” *O’Connor v. District of Columbia*, 921 A.2d 853, 858 (D.C. 2007). In reviewing a motion for summary judgment, the Court must view the facts in the light most favorable to the non-moving party and draw all reasonable inferences accordingly. *Morrison v. MacNamara*, 407 A.2d 555, 560 (D.C. 1979). If the evidence permits differing reasonable interpretations or if a fair-minded jury could return a verdict for the non-moving party, summary judgment is inappropriate. See *Byrd v. Jackson*, 902 A.2d 778, 781 (D.C. 2006).

II. The Trial Court Erred in Granting Summary Judgment on Mr. Jennings' Breach of Contract and Promissory Estoppel Claims

The trial court erred in concluding that the 2013 Procedures were not part of the parties’ contractual agreement and thus the requirement to use instructors of record for the comprehensive exams have no contractual force. JA0656-0657. The trial court further erred in determining that the University’s actions were not in bad faith or otherwise arbitrary and capricious.

“Under D.C. law, the elements required to prevail on a claim of breach of

contract are ‘(1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by breach.’” *Camarda v. Certified Fin. Planner Bd.of Standards, Inc.*, 672 F. App’x 28, 29 (D.C. Cir. 2016) (quoting *Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009)). Further, under D.C. law, the relationship between a university and its students is contractual in nature. *Basch v. George Washington Univ.*, 370 A.2d 1364, 1366 (D.C. 1977). While courts defer to a university’s academic judgment, that deference does not extend to violations of clearly stated procedural rights or bad-faith deviations from established academic policies. *Wright v. Howard Univ.*, 60 A.3d 749, 755 (D.C. 2013).

There is material factual disputes in the record over whether Appellees breached their duty by performing the contractual obligations in bad faith, or for blocking Mr. Jennings from fulfilling his contract obligations, which “sounds in contract . . . and damages may be recovered for its breach as part of a contract action[.]” *Nugent v. Unum Life Ins. Co. of Am.*, 752 F. Supp. 2d 46, 56 (D.D.C. 2010) (citations omitted).

A reasonable jury could conclude that the University breached its contractual obligations, by showing “that a university breached the implied covenant of good faith and fair dealing [by demonstrating] ‘either bad faith or

conduct that is arbitrary and capricious[.]’” *Doe v. Am. Univ.*, No. 19-cv-03097 (APM), 2020 U.S. Dist. LEXIS 171086, at *44 (D.D.C. Sep. 18, 2020) (quoting *Chenari v. George Wash. Univ.*, 847 F.3d 740 at 745 (D.C. Cir. 2017) (quoting *Wright v. Howard Univ.*, 60A.3d 749, 754-55 (D.C. 2013))

Mr. Jennings argued that Appellees bad faith acts or otherwise arbitrary and capricious acts, alone or in conjunction caused Mr. Jennings to fail his exam, resulting in his removal from the program and the termination of the University’s obligation to provide Mr. Jennings with an education, as follows:

- Howard failed to ensure that exams were administered by instructors of record. JA0532 and JA 0564-0565.
- Howard failed to provide Mr. Jennings with an adequate overview of materials that would be covered in the Fall 2019 comprehensive exams. JA 0564-0565.
- Defendant Howard’s proctor for Continuum Mechanics, Dr. Olowabi, disruptively berated an examinee in the midst of the Fall 2019 comprehensive exam for which Mr. Jennings sat. JA0533, JA0565 and JA 0607 (Smith Dep. 1, at 139:3-140:2).
- Howard refused to allow Mr. Jennings to retain his Fall 2019 comprehensive exam answers and thus meaningfully study and learn from his mistakes. JA0533 and JA0565.
- Howard changed the format of the Spring 2020 Continuum Mechanics exam from open-book, open-note to closed-book, open-note. JA0533 and JA0565.
- Howard failed and dismissed many if not all of Dr. Smith’s

advisees in a given year, Mr. Jennings included, which would indicate that Howard, through its agent Dr. Smith, provided inadequate advising to Plaintiff. JA0541

The University also engaged in other bad faith acts in its servicing its contract, as Mr. Jennings tried to sustain his enrollment in the PHD Program. A reasonable jury could conclude that by blocking Mr. Jennings' attempts to scrutinize the reasons behind his removal, the University intentionally stymied his recourse in having the University continue providing with an education, which was a contractual duty. JA0535 and JA0567.

Further, the trial court failed to credit that Mr. Jennings relied on the 2013 procedures in good faith and that faculty—including Dr. Smith—had previously represented those standards as controlling. JA0531, JA0563, and JA0098. The trial court also improperly ignored the material factual disputes regarding the meaning of “administered by the department” and whether the examiners were qualified and authorized under applicable rules. There is no dispute that in at least some instances, the exam portion Mr. Jennings' took was neither written nor graded by a member of Mr. Jennings' department, as was the case with Dr. Hübsch's Mathematical Methods exam. JA 0183 (Jennings Tr. 103-04). These material factual disputes require permitting a jury to weigh in on these issues and dismissal on summary judgment was improper. Furthermore, Mr. Jennings presented sufficient evidence of damages: he was dismissed from a doctoral

program, lost the opportunity to complete his Ph.D., and suffered significant reputational and career harm. These are concrete, compensable injuries. *Wright*, 60 A.3d at 753.

The trial court concluded that Mr. Jennings' promissory estoppel claim failed because the GS Rules and the Department Handbook govern the rules for the comprehensive exams and grievance procedures and Dr. Smith's statements were too indefinite to be enforceable. JA0668-0669. To establish a claim for promissory estoppel, Mr. Jennings must show 1. a promise; 2. that the promise reasonably induced reliance on it; and (3) that the promisee relied on the promise to his or her detriment. *Simard v. Resolution Trust Corp.*, 639 A.2d 540, 552 (D.C. 1994) (citing *Choate v. TRW, Inc.*, 14 F.3d 74, 77 (D.C. Cir. 1994)). Mr. Jennings has consistently pled, he relied on a number of the University's legal promises as found in Howard University's Comprehensive Exam Procedures, the Howard University Student Handbook, Rules and Regulations for the Pursuit of Academic Degrees, and the Graduate Programs in the Department of Mechanical Engineering Guidelines in deciding to enroll in Howard University's doctorate program in Mechanical Engineering. Mr. Jennings may not have relied on the physical document of the 2013 Comprehensive Exam Procedures, however, he did rely the representations made, especially by Dr. Smith's summary of that document "that the Comprehensive Examination on each subject would be

administered by the professors who taught the courses.” JA0531, JA 0563, and JA 0098. He also relied on the University’s representations regarding grievance and academic appellate procedures. JA0534 and JA0566 and JA0535 and JA0567. The trial court improperly disregarded the impact of Dr. Smith’s statements and erroneously limited the promissory estoppel claim on a misapplied interpretation of Mr. Jennings evidence in the record.

Summary judgment was therefore improper on the totality of the breach of contract and promissory estoppel claims.

III. The Trial Court Erred in Dismissing Mr. Jennings’ Claims for Negligent Supervision, Negligent Retention, and Tortious Interference with Business Relations

The trial court determined that the standard of care in this matter is connected to the concepts of academic freedom and deference JA0671 and that the evidence in the record did not support a claim for negligent supervision or negligent retention. JA 0672-0673.

Mr. Jennings’ tort claims alleged that Howard University knowingly retained and failed to supervise Dr. Owolabi and other faculty members despite actual or constructive knowledge of their discriminatory and retaliatory conduct. Mr. Jennings also alleged that Dr. Owolabi acted outside the scope of his official

duties when he sabotaged Mr. Jennings' progress in the Ph.D. program, constituting tortious interference with his educational relationship with the University.

To state a claim for negligent supervision and retention, a plaintiff must allege that the employer knew or should have known that the employee behaved in a dangerous or otherwise incompetent manner and that the employer failed to take appropriate action. See *Brown v. Argenbright Sec., Inc.*, 782 A.2d 752, 760 (D.C. 2001). Mr. Jennings' complaint satisfied these requirements by alleging prior incidents of bias and student complaints against Dr. Owolabi that were disregarded by the University. Howard University acknowledged that Dr. Owolabi was the subject of a series of complaints. (JA0114-JA0115). A reasonable jury could conclude that the complaints against Dr. Owolabi put the University on notice that there were serious questions about Dr. Owolabi's professionalism, which if addressed, would have precluded him from administering the Comprehensive Exams, which would have precluded the University from disregarding its 2013 policies to ensure a fair examination. There is also a dispute in material fact over the customary nature of the 2013 exam practices. While the University disputes that the procedures reflected a practice that was intended to extend to future years, Dr. Smith has both disputed this interpretation and whether Dr. Owolabi himself considered the 2013 guidelines

binding for future exams. See Dr. Smith Dep. 1, at 173:9-174:10 JA0285

Further, Mr. Jennings established that *had* the University exercised ordinary care in deciding who would oversee its comprehensive examination procedures, the exam would have been carried out in accordance with the 2013 guidelines, and Mr. Jennings would not have experienced the harm of failing his exams and being removed the program.

The trial court also erred in dismissing Mr. Jennings' tortious interference claim, as it ignored the 2013 Procedures and determined that Dr. Owolabi could not interfere with a non-existent contract and there was no evidence establishing that Dr. Owolabi acted with malice. JA 0674. To establish a tortious interference claim, a plaintiff must show "(1) the existence of a valid business relationship... (2) knowledge of the relationship... (3) intentional interference... (4) resulting in damages." *Newmyer v. Sidwell Friends Sch.*, 128 A.3d 1023, 1039 (D.C. 2015). Dr. Owolabi did not dispute that there was a contract between Mr. Jennings and the University that was known to Dr. Owolabi and that the contract entailed the provision of educational services to Mr. Jennings. Mr. Jennings has presented evidence that a jury could reasonably conclude that Dr. Owolabi intentionally, with malice, sabotaged Mr. Jennings' academic progress and interfered with the contractual relationship between Mr. Jennings and the University because these

actions resulted in Mr. Jennings failing his exams and the termination of the contractual relationship. Furthermore, the conduct alleged—including manipulation of academic evaluations and retaliatory grading—was plausibly outside the scope of Dr. Owolabi’s legitimate educational functions and instead motivated by personal animus. See *District of Columbia v. Chinn*, 839 A.2d 701, 707 (D.C. 2003) (intentional or malicious acts may fall outside the scope of employment). Thus, a reasonable jury could conclude that Dr. Olowabi undertook these actions knowing their almost certain impact on the contractual relations between Mr. Jennings and the University. Therefore, dismissal on summary judgment was improper.

IV. The Trial Court Erred in Limiting the Contract Claim and Excluding Economic Damages

The University argues that Mr. Jennings should be barred from presenting any evidence of economic damages because his interrogatory responses allegedly lacked sufficient detail. They rely on the trial court’s May 18, 2023, discovery ruling, which stated that Mr. Jennings would be "stuck with" his existing interrogatory responses, and assert that this ruling constitutes the law of the case and justifies precluding all damages other than nominal. JA 0056-0069.

This argument is flawed for several reasons. It mischaracterizes the

purpose and limits of the law-of-the-case doctrine. That doctrine applies only to settled legal determinations—not to evidentiary exclusions that deprive a party of the opportunity to be heard on the merits. See *Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm’n*, 677 A.2d 46, 48 (D.C. 1996). Here, the trial court's ruling prematurely resolved the question of economic damages without affording Mr. Jennings a full and fair opportunity to present relevant evidence at trial.

The University overstates the supposed insufficiency of Mr. Jennings' discovery responses. Jennings clearly articulated in his Complaint, interrogatories, and deposition testimony that he suffered measurable economic harm resulting from delayed graduation, interruption in career advancement, and reputational injury due to his dismissal. He stated that the damages included the postponement of income and lost professional opportunities. The absence of an exact dollar computation does not render such damages speculative. Courts routinely permit juries to assess damages based on lay testimony and circumstantial evidence, especially where the wrongful conduct itself (here, academic dismissal) made precise measurement difficult. See *Garcia v. Llerena*, 599 A.2d 1138, 1142 (D.C. 1991).

Also, Mr. Jennings made good-faith efforts to clarify and support his damages theory, including referencing documents and testimony that explained

the bases of his economic loss. If there was any perceived deficiency in detail, the proper remedy was not exclusion, but cross-examination at trial. The trial court's exclusionary ruling improperly elevated form over substance and denied Mr. Jennings the opportunity to have a jury evaluate the full scope of his injuries.

In sum, the trial court erred in barring economic-loss evidence and limiting the case to nominal damages. That ruling stripped Mr. Jennings of the opportunity to be made whole for the genuine financial harm he suffered and should be reversed.

V. The Trial Court Erred in Concluding Mr. Jennings' Economic Damages Were Speculative and Unsupported

Appellees contend that Mr. Jennings' theory of economic loss is inherently speculative because it depends on hypothetical assumptions about academic outcomes and future employment. JA 0083. They argue that Mr. Jennings has not provided sufficient evidence to show, with reasonable certainty, that his dismissal from Howard University caused him economic harm. *Id.* According to Appellees, Mr. Jennings failed to offer expert testimony, did not quantify his losses with specificity, and could not establish a direct causal link between the role of Dr. Hubsch in preparing the Mathematical Methods examination and his dismissal.

This argument misconstrues the applicable legal standard and ignores the

substantive evidence Mr. Jennings provided. The law does not require Mr. Jennings to present expert testimony or precise dollar figures to recover economic damages. Rather, Mr. Jennings must present evidence from which a reasonable jury could infer, with a fair degree of certainty, that the Mr. Jennings suffered a quantifiable loss caused by the Appellees conduct. See *Garcia v. Llerena*, 599 A.2d 1138, 1142 (D.C. 1991); *Hawthorne v. Canavan*, 756 A.2d 397, 401 (D.C. 2000) (holding that damages cannot be based on pure speculation but may be inferred from a reasonable evidentiary basis).

Mr. Jennings clearly met that standard. In both his pleadings and deposition testimony, he explained that his dismissal delayed his academic progress, disrupted his career trajectory, and deferred his earning capacity. He testified that had he not been improperly dismissed, he likely would have completed his Ph.D. sooner and entered the job market with significantly greater credentials. These facts are neither speculative nor conjectural—they are grounded in Mr. Jennings’ lived academic experience, supported by the procedural history of his dismissal, the University’s handbook (JA 0372 – 0393) and corroborated by his continued enrollment and progress at the University of Virginia.

Appellees’ assertion that Mr. Jennings needed expert testimony to prove

economic damages is legally unsupported. Courts have repeatedly held that lost income and career delay may be established through lay testimony and reasonable inferences. See *Pence v. U.S.*, 316 F.2d 570, 577 (D.C. Cir. 1963) (upholding damages based on Mr. Jennings' own testimony about lost earnings); *Pioneer Inv. Servs. Co. v. Brunswick Assocs.*, 507 U.S. 380, 395 (1993) (recognizing flexible, equitable standards for evaluating prejudice caused by delays).

Appellees' attempt to isolate Dr. Hubsch's role as the sole relevant event ignores the broader context of Mr. Jennings' claims. The record reflects that Mr. Jennings was dismissed under disputed circumstances involving multiple violations of academic protocols, including who was authorized to prepare and grade comprehensive examinations. The cumulative effect of these deviations from established procedure—including the involvement of a non-departmental faculty member—undermined the legitimacy of his dismissal. That Mr. Jennings failed other parts of the exam does not sever the causal chain; rather, it raises a factual dispute over how his performance was evaluated and whether he was treated fairly.

Finally, the claim that Mr. Jennings remained employed during his studies at the University of Virginia is irrelevant. The fact that Mr. Jennings managed to

sustain employment does not mean he suffered no economic harm. What matters is that he was forced to re-enroll at a new institution, repeat coursework, and defer his professional goals—all of which are compensable harms. Courts do not require economic damages to result in total unemployment; delays, setbacks, and diminished earning trajectories are sufficient. See *Howard Univ. v. Best*, 484 A.2d 958, 986 (D.C. 1984).

Accordingly, the trial court’s conclusion that Mr. Jennings’ economic damages were too speculative was incorrect as a matter of law. Mr. Jennings presented a plausible, well-supported theory of loss that should have been presented to a jury. The summary exclusion of that claim warrants reversal.

CONCLUSION

For the foregoing reasons, Mr. Jennings respectfully asks this Court to reverse the judgment of the trial court, and remand the case for trial on Mr. Jennings’ tort and contract claims, including his claim for economic damages.

Date: August 28, 2025

Respectfully submitted,

/s/ David A. Branch

David A. Branch

D.C. Bar No. 438764

Law Offices of David A. Branch &
Associates, PLLC

1120 Connecticut Avenue, NW
Suite 500

Washington, D.C. 20036

**CERIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS
FOR APPELLANT’S OPENING BRIEF**

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains approximately 6,693 words, excluding the parts exempted by Rule 32(f).

Respectfully submitted,

/s/ David A. Branch

David A. Branch
Law Offices of David A. Branch &
Associates, PLLC
1120 Connecticut Avenue, NW
Suite 500
Washington, D.C. 20036
(202) 785-2805
davidbranch@dbranchlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 2025 a copy of the foregoing was served on counsel for Appellees below through Pacer.

Daniel I. Prywes (D.C. Bar No. 342394)
Rebecca K. Connolly (D.C. Bar No. 1742372)
MORRIS, MANNING & MARTIN, LLP
1333 New Hampshire Ave, NW, Suite 800
Washington, DC 20036
Phone: (202) 971-4182
Fax: (202) 408-5146
dprywes@mmmlaw.com
rconnolly@mmmlaw.com

Counsels for Appellees

/s/ David A. Branch _____

David A. Branch