

IN THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CHRISTOPHER CHARLES SHAFFER
Appellant

v.

Case No. 2D23-2662

RINGLING COLLEGE OF ART AND DESIGN, INC.
Appellee

APPEAL FROM THE

Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County,
Florida, L.T. Case No.: 2021CA-000230NC

REPLY BRIEF OF CHRISTOPHER CHARLES SHAFFER

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
ARGUMENT I	1
RINGLING’S ARGUMENTS IN OPPOSITION TO PLAINTIFF’S APPEAL ARE UNVAILING	1
A. The Benefit Conferred to Ringling is Clear and Quantifiable	1
B. Ringling’s Internal Policies Do Not Apply to Mr. Shaffer’s Situation	4
1. Misapplication of Grievance Procedures and Non-harassment Policy	4
2. Overreach of College Authority and Extraordinary Circumstances	6
C. The Staff Handbook Does Not Apply to This Situation	7
D. Mr. Shaffer’s Forbearance Provided Substantial Benefit to Ringling	11
ARGUMENT II	13
THE ORAL AGREEMENT BETWEEN MR. SHAFFER AND RINGLING SUPPORTS THE UNJUST ENRICHMENT CLAIM	13
CONCLUSION	15

TABLE OF AUTHORITIES

	<u>Page</u>
Cases	
<i>Muller v. Stromberg Carlson Corp.</i> , 427 So. 2d 266 (Fla. 2d DCA 1983)	9
<i>Sch. Bd. Of Dade County v. Dade Teachers Assn.</i> , 421 So 2d 645, 648 (Fla Dist Ct App 1982).....	6

APPELLANT'S REPLY BRIEF

Appellant, CHRISTOPHER CHARLES SHAFFER ("Mr. Shaffer"), offers the following reply to Appellee, RINGLING COLLEGE OF ART AND DESIGN, INC., ("Ringling")'s answer to Mr. Shaffer's initial brief submitted in support of his appeal of the trial court's order that granted summary judgment to defendant and dismissed plaintiff's complaint.

ARGUMENT I

RINGLING'S ARGUMENTS IN OPPOSITION TO PLAINTIFF'S APPEAL ARE UNAVAILING

The crux of Defendant's brief in opposition to Plaintiff's appeal is that the trial court's decision dismissing Plaintiff's complaint was adequate because there was no genuine issue of material fact on any of the essential elements of a claim for unjust enrichment under Florida law. As amply was briefed in Plaintiff's principal brief in support of its appeal, not only were there numerous issues of fact that should have precluded an award of summary judgment to Defendant in this case, but the trial court also erred by ignoring those issues of fact when it inexplicably determined that plaintiff adequately was compensated by defendant for the significant benefits he conferred on defendant.

A. The Benefit Conferred to Ringling is Clear and Quantifiable

Ringling's attempt to obscure the clear, quantifiable benefit it received from Mr. Shaffer's silence is unconvincing. By preventing Mr. Shaffer from defending his reputation against unfounded complaints, Ringling prioritized its own reputation during a public relations crisis. Both Ringling and the trial court disregarded substantial evidence and expert testimony establishing these benefits. Expert witness Matthew Davison calculated this benefit to be a minimum of \$117,000 to \$325,000 (R. 3055), based on analysis of the reputational damage control afforded to Ringling. For Ringling to claim it received no benefit, and for the trial court to conclude that Mr. Shaffer was adequately compensated, contradicts this evidence and constitutes reversible error. (R. 4757 -- 4758; 4762; 4764; R. 4708)

Ringling's argument is self-contradictory: it claims both that it received no benefit from Mr. Shaffer's silence and that if there was a benefit, Mr. Shaffer was adequately compensated for it. This inconsistency demonstrates genuine issues of material fact that should have precluded summary judgment.

Ringling benefitted significantly from Mr. Shaffer's silence as it was able to control the narrative (R. 1310; 1312; 1319 -- 1321; 1878 -- 1879; 3431 -- 3433). This was the strategy laid out by the public relations

firm (Tucker/Hall Inc.) Ringling retained (R. 1319 -- 1325; 1364 -- 1365; 1489 -- 1493; 1512; 1874; 1877 -- 1879; 2912 -- 2915; 3438 -- 3440). By instructing Mr. Shaffer to remain silent, Ringling minimized negative publicity and protected its brand during a potentially damaging crisis. (R. 2021 -- 2022; 4282)

Crucially, this substantial benefit was not part of Mr. Shaffer's employment duties as Ringling's Chief Housing Officer. Mr. Shaffer's role, was to be responsible for student housing, managing Residence Life Coordinators, and overseeing mailroom operations (R. 3084 -5). Nowhere in his job description was Mr. Shaffer required to manage Ringling's public relations or endure public attacks without response.

The benefit conferred to Ringling far exceeded any reasonable expectation of an employee's duties. Mr. Shaffer essentially became a silent scapegoat, absorbing significant personal and professional damage to shield Ringling. This is not a typical employee duty and presents an issue of fact for a jury to decide.

While Ringling benefited from Mr. Shaffer's silence to the tune of \$117,000 to \$325,000, Mr. Shaffer himself suffered significant personal and professional harm. (R. 4283) According to the same expert analysis,

the cost to repair Mr. Shaffer's personal reputation was estimated between \$39,000 and \$65,000 (R. 4282). This disparity highlights the unjust nature of the benefit Ringling received without compensating Mr. Shaffer.

The timing of Mr. Shaffer's silence was particularly valuable due to the rapid spread of information on social media. By controlling the narrative during this critical period, Ringling could implement its damage control strategies without interference. (R. 2021 -- 2022; 4282; 4283) The value of this controlled narrative in the immediate aftermath of the allegations cannot be overstated, as it set the tone for public perception throughout the entire incident.

Simply put, no reasonable jury could find that Ringling received no benefit from Mr. Shaffer's silence. The benefit was clear, quantifiable, and extraordinary, far exceeding any reasonable expectation of an employee's duties. This stark imbalance forms the core of the unjust enrichment claim, demonstrating that Ringling received a substantial benefit that it would be unjust to retain without adequate compensation.

B. Ringling's Internal Policies Do Not Apply to Mr. Shaffer's Situation
1. Misapplication of Grievance Procedures and Non-harassment Policy

Ringling erroneously argues that Mr. Shaffer was bound by the Grievance Procedures to participate in an internal investigation. This argument mischaracterizes the situation and Ringling's internal policies, and no doubt misled the trial court to grant summary judgment in Ringling's favor.

The Grievance Procedures and Non-harassment Policy, as stated in the Staff Handbook, are designed to address internal matters within the Ringling community (R. 2737). These policies regulate issues between current college employees or between employees and students - not between employees and unaffiliated members of the public.

Ms. Ruiz, at the time of her attacks on Mr. Shaffer, was neither a student nor an employee of Ringling. Her status as an alumnus places the entire situation outside the scope of Ringling's internal policies. These procedures never were intended to govern how employees respond to attacks from external parties who have no current relationship with Ringling.

The trial court erred in ruling that these procedures applied to Mr. Shaffer after Ms. Ruiz began her Twitter assault on Mr. Shaffer (R. 4744). This ruling incorrectly expanded the scope of these policies

beyond their intended purpose and beyond what any reasonable employee would expect. Crucially, the trial court made a determination on an issue of fact that should have been left for a jury to decide.

2. Overreach of College Authority and Extraordinary Circumstances

Ringling's attempt to apply these internal policies to Mr. Shaffer's situation represents an overreach of its authority. While an employer can regulate workplace conduct, it cannot reasonably extend its policies to control an employee's response to personal attacks made in public forums by individuals unaffiliated with the institution. Such an extension improperly infringes upon an employee's personal rights beyond the scope of employment. Absent explicit language extending policies to employees' personal matters outside of work, these policies should not be interpreted to have such broad reach. *See Sch. Bd. Of Dade County v. Dade Teachers Assn.*, 421 So 2d 645, 648 (Fla Dist Ct App 1982) (holding that an employer's restriction on off-duty employees' conduct should be narrowly constructed.)

Mr. Shaffer's situation was extraordinary in multiple respects. First, he faced a widespread, public campaign of defamation that included death threats (R. 3121). No reasonable interpretation of Ringling's internal

policies would require an employee to remain silent in the face of such extreme and potentially dangerous attacks.

Second, beyond the publicly visible situation, Mr. Shaffer also was subjected to a shadow investigation. This investigation, as evidenced by Dr. Walsh's text messages (R. 1654 – 1658), was based on general social media discussions that could potentially harm Ringling's reputation. This dual burden – managing public attacks while simultaneously being scrutinized internally – further illustrates how Ringling exploited Mr. Shaffer's cooperation for its own benefit.

The combination of these factors – the public defamation campaign, the death threats, and the internal shadow investigation – created a situation that extended far beyond any reasonable employment expectation. It underscores the inappropriateness of applying standard internal policies to Mr. Shaffer's extraordinary circumstances and highlights Ringling's prioritization of its reputation over the well-being and rights of its employees.

C. The Staff Handbook Does Not Apply to This Situation

Ringling's reliance on its Staff Handbook to justify its actions is misplaced and represents an overextension of its policies. The handbook,

designed for internal governance, cannot reasonably be applied to the extraordinary circumstances Mr. Shaffer faced.

The Staff Handbook, including its communication policies, is primarily designed to regulate behaviors and interactions within Ringling's community. Its scope is limited to the professional conduct of employees in their capacity as representatives of the institution. The handbook states, "The Special Assistant to the President for Media Relations is charged with coordinating all public information provided by Ringling to the media and others seeking information and comment" (R. 3754). This policy clearly pertains to official college communications, not personal matters of employees.

Mr. Shaffer's situation - a public attack on his character by an alumnus no longer affiliated with Ringling - falls outside the reasonable purview of the handbook. The attacks were personal in nature, targeted at Mr. Shaffer as an individual rather than in his capacity as a college employee.

Crucially, Ms. Ruiz had no standing to make a report against Mr. Shaffer (R. 3384 – 3385; 3398; 3400). She had not filed any formal complaints but instead used social media and open letters to solicit reports

from anyone, regardless of their connection to Ringling or the veracity of their claims. (R 1340 – 1341)¹ This fact underscores the inappropriateness of applying the Staff Handbook to restrict Mr. Shaffer's actions.

Characterizing Mr. Shaffer's lawsuit as retaliatory is fundamentally flawed. Ms. Ruiz was not a complainant in any official capacity, and Mr. Shaffer's legal action did not interfere with any investigation. Ringling's own press release stated that 40 people submitted reports against Mr. Shaffer, all solicited through Ms. Ruiz's social media campaign (R. 172-173). Notably, Mr. Shaffer did not sue any of these individuals. His targeted legal action against Ms. Ruiz, the instigator of these unfounded allegations, can hardly be considered retaliatory in the context of Ringling's policies. The trial court erred when it concluded that Shaffer's lawsuit against Ruiz “could be considered retaliation” (R. 4709). This determination was an issue of fact that should have been left for a jury to decide.

Florida law is clear on the limited enforceability of employee handbooks. In *Muller v. Stromberg Carlson Corp.*, 427 So. 2d 266 (Fla. 2d

¹ Ms. Ruiz, other than through social media, borrowed the format “open letter” to solicit mobs to go after Mr. Shaffer, instead of using formal complaints. The problem with this approach is that Ms. Ruiz was able to escape from scrutiny while dumping all the burden of proof on Mr. Shaffer.

DCA 1983), the court held that policy statements in employment manuals do not create enforceable contract rights unless they contain specific language expressing the parties' explicit mutual agreement that the manual constitutes a separate employment contract. Ringling has not demonstrated that its handbook meets this legal standard.

Ringling's attempt to unilaterally enforce these policies creates an inequitable scenario. It seeks to bind Mr. Shaffer to these policies while Ms. Ruiz, as a former student and alumnus, can act unfettered without any limit or scrutiny. This creates an inherently imbalanced situation where Mr. Shaffer is expected to adhere to restrictive policies that limit his ability to defend himself, while his accuser operates without any comparable constraints. This uneven application of the handbook policies is tantamount to a "Rules for thee, but not for me" situation. It imposes an undue burden on Mr. Shaffer while allowing his accuser complete freedom of action, which contradicts the principles of fairness.

In conclusion, Ringling's reliance on the Staff Handbook to justify its actions against Mr. Shaffer misses the mark. The handbook never was intended to govern employees' responses to personal attacks from unaffiliated individuals.

D. Mr. Shaffer's Forbearance Provided Substantial Benefit to Ringling

Contrary to Ringling's assertions, Mr. Shaffer's forbearance from legal action and public response provided a substantial and unique benefit to Ringling, beyond the quantifiable monetary value previously discussed.

The critical nature of timing in reputation management cannot be overstated. In the age of social media, where information spreads rapidly and public opinion can solidify quickly, the immediate response to allegations is crucial. Mr. Shaffer's 42-day period of silence allowed Ringling to control the narrative during this critical window. This period of forbearance was particularly valuable because:

1. It allowed Ringling to formulate and execute its PR strategy without competing narratives from Mr. Shaffer.
2. It prevented potential escalation of the situation that might have occurred had Mr. Shaffer immediately defended himself publicly.
3. It gave the impression of a unified front, potentially reducing media interest in what could have been portrayed as an internal conflict.

By instructing Mr. Shaffer to remain silent, Ringling actively used his forbearance as a tool in its reputation management strategy. This transforms his forbearance from a mere absence of action into a tangible benefit consciously exploited by Ringling.

It is noteworthy that while Ringling engaged a public relations firm to manage the situation, these services were never made available to Mr. Shaffer. (R 2223; 4510) This exclusion further demonstrates that Ringling's primary concern was managing its own public image, rather than supporting its employee who was under attack. (R 2223) Had Mr. Shaffer been included in these discussions, he could have provided valuable context that might have benefited both parties. Instead, Ringling chose to benefit exclusively from Mr. Shaffer's silence, while actively shaping the narrative to its advantage.

Moreover, Mr. Shaffer's silence came at a significant personal cost that goes beyond reputational damage. During this period, he endured extreme harassment, including death threats (R. 3121). This level of personal sacrifice for the benefit of an employer goes far beyond any reasonable expectation of an employee's duties, even in an at-will employment arrangement.

Ringling's argument that Mr. Shaffer's eventual legal action negates the benefit they received is misguided at best. Ringling had already reaped the benefits of Mr. Shaffer's silence during the most critical period of the controversy. The fact that Mr. Shaffer eventually took action to defend himself does not erase or diminish the substantial benefit Ringling had already received.

In essence, Ringling benefited from having Mr. Shaffer serve as a silent lightning rod, absorbing the brunt of public attacks while Ringling strategized its response. This benefit goes beyond mere reputation management; it allowed Ringling to maintain its operations and student relations without the disruption that would have inevitably occurred had Mr. Shaffer immediately and publicly defended himself.

ARGUMENT II

THE ORAL AGREEMENT BETWEEN MR. SHAFFER AND RINGLING SUPPORTS THE UNJUST ENRICHMENT CLAIM

While the unjust enrichment claim stands on its own merits, the circumstances surrounding the alleged oral agreement between Mr. Shaffer and Ringling further illustrate the inequitable nature of Ringling's actions.

Mr. Shaffer contends that Ringling, through its representatives Mr. Mathews and Dr. Walsh, assured him of continued employment in

exchange for his silence regarding the allegations (R. 3140, 3142 – 3143). This alleged agreement, even if not rising to the level of an enforceable contract, demonstrates Ringling's recognition of the value of Mr. Shaffer's silence and its willingness to offer consideration for it.

Ringling's subsequent actions – terminating Mr. Shaffer after benefiting from his silence – underscore the unjust nature of its enrichment. By allegedly promising continued employment and then renegeing on that promise, Ringling effectively obtained the benefit of Mr. Shaffer's silence under false pretenses.

Moreover, this alleged agreement highlights that Ringling viewed Mr. Shaffer's silence as something beyond his normal job duties. If remaining silent in the face of public attacks were simply part of Mr. Shaffer's employment obligations, there would have been no need for additional assurances of continued employment.

While Plaintiff acknowledges the challenges in enforcing an oral contract in an at-will employment context, the circumstances surrounding this alleged agreement provide crucial context for the unjust enrichment claim. They demonstrate Ringling's awareness of the value they were receiving from Mr. Shaffer's silence and its willingness to offer something in

return – a clear indication that they understood this was not a standard part of his job duties.

In conclusion, whether or not the alleged oral agreement rises to the level of an enforceable contract, its existence and the surrounding circumstances strongly support Mr. Shaffer's claim for unjust enrichment. They illustrate Ringling's recognition of the benefit it received and the inequitable nature of its subsequent actions.

CONCLUSION

This case centers on the extraordinary circumstances Mr. Shaffer faced and the substantial, quantifiable benefit Ringling unjustly received. Ringling exploited Mr. Shaffer's silence during vicious public attacks by an unaffiliated third party, prioritizing its reputation over its employee's rights. Ringling's actions far exceeded typical employer-employee boundaries, effectively denying Mr. Shaffer's right to self-defense for Ringling's own benefit. This is not a matter of routine employment policies, but a clear case of unjust enrichment.

For these reasons, Plaintiff respectfully requests that this Court reverse the trial court's order that granted summary judgment to Ringling and remand the case for a trial on Mr. Shaffer's unjust enrichment claim.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to **Duane A. Daiker**, ddaiker@shumaker.com, and jkerr@shumaker.com and Jennifer B. Compton, jcompton@shumaker.com; jcollier@shumaker.com, and dmills@shumaker.com via the Florida Courts E-Filing Portal on the 26th day of August, 2024.

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I hereby certify that this brief was prepared using Arial 14-point font and that it complies with the word count requirements in the Florida Rules of Appellate Procedure.

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