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U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
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LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA

Renee S. Hartz, M.D.

VERSUS

VICTOR R. FARRUGIA,
ROBERT A. KUTCHER,
NICOLE TIGER,
and
CHOPIN, WAGAR, RICHARD, & KUTCHER, LLP

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CIVIL ACTION
NO. 06: _____

06-3164

SECTION " " ()
JUDGE

SECT. 1 MAG 1
MAGISTRATE _____

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COMPLAINT

1. This suit is a malpractice action brought under the Laws of the State of Louisiana. Jurisdiction of this Court is established under 28 United States Code, Section 1332. Venue lies with this Court pursuant to 28 United States Code, Section 1391(a)(1) and (a)(2) as the defendants reside in this district, and as the acts or omissions giving rise to the claims alleged herein occurred within this district.

2. This is a civil action brought on behalf of the plaintiff, Renee S. Hartz, M.D., to redress the injury caused to her by the negligence of defendants regarding certain legal matters fully described herein.

3. Plaintiff, Dr. Hartz, ("Dr. Hartz"), a person of full age and majority, is a resident of Oak Park, Illinois.

4. Made defendants herein are:

- 1) Victor R. Farrugia ("Mr. Farrugia"),

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individually, and/or a professional law corporation, a resident of Louisiana, who maintains a law office within this district at 228 St. Charles Ave. Suite 1100, New Orleans, LA 70130-2601;

2) Robert A. Kutcher ("Mr. Kutcher"), individually, and/or a professional law corporation, a resident of Louisiana, who maintains a law office within this district, 2 Lakeway Center, 3850 North Causeway Boulevard, Metairie, LA 70002, Suite 900;

3) Ms. Nicole Tiger, individually, and/or a professional law corporation, a resident of Louisiana, who maintains a law office within this district, 2 Lakeway Center, 3850 North Causeway Boulevard, Metairie, LA 70002, Suite 900;

4) CHOPIN, WAGAR, RICHARD, & KUTCHER, L.L.P., a professional law partnership, a resident of Louisiana, which maintains a law office within this district, 2 Lakeway Center, 3850 North Causeway Boulevard, Metairie, LA 70002, Suite 900.

5. Dr. Hartz is a physician who received Board Certification in Thoracic Surgery in 1982. Dr. Hartz holds medical licensure in Illinois and Louisiana. Dr. Hartz earned a Bachelor of Arts (B.A.) from Michigan University (1969), and the degree of Medical Doctor (M.D.) from Northwestern University Medical School (1974). She is a Fellow of the American Board of Thoracic Surgery.

6. Dr. Hartz was employed at Tulane University School of Medicine, as a Professor of Surgery, Department of Surgery, Division of Cardiothoracic Surgery, Tulane University School of Medicine, from July, 1997 until June 30, 2003. During the time period relevant to this action, Dr. Hartz also practiced thoracic surgery at Tulane University Hospital and Clinic "TUHC", the Medical Center of Louisiana at New Orleans ("MCLNO" or "Charity Hospital Campus" and "University Hospital Campus"). Tulane considered Dr. Hartz for tenure on May 20, 2002.

7. For fifteen years prior to coming to Tulane, Dr. Hartz practiced as a cardiothoracic surgeon in the Chicago, Illinois area and served as a tenured Associate Professor of Surgery, Department of Surgery, Division of Cardiothoracic Surgery, Northwestern University Medical School, and as a Professor of Surgery, Department of Surgery, Division of Cardiothoracic Surgery, University of Illinois at Chicago College of Medicine, where she was also Program Director of the cardiothoracic training program and Chief of Cardiac Surgery.

8. When Tulane considered Dr. Hartz for tenure on May 20, 2002, the Personnel and Honors Committee voted in her favor 7-2 to award tenure. However, on June 20, 2002, an administrative committee, the Executive Faculty Committee, vetoed the favorable tenure decision of the Personnel and Honors Committee.

9. The Executive Faculty Committee informed Dr. Hartz of its decision June 21, 2002.

10. The matter was returned to the Personnel and Honors Committee, which again voted to award Dr. Hartz tenure on July 15, 2002.

11. On July 16, 2002, the Executive Faculty Committee vetoed, the second favorable tenure decision of the Personnel and Honors Committee.

12. The Dean of Tulane University School of Medicine and Associate Senior Vice President for the Health Sciences, concurred with the Executive Faculty's adverse decision and notified Dr. Hartz by letter, dated July 16, 2002 (which she

received on or about July 17, 2002). The letter, dated July 16, 2002, notified Dr. Hartz that the 2002-2003 academic year would be her terminal year at Tulane.

13. Dr. Hartz filed a grievance with Tulane over the decision of the Executive Faculty Committee to veto the recommended tenure on October 19, 2002. The Grievance Committee decided the grievance in Dr. Hartz's favor on December 11, 2002.

14. The Dean of the Tulane University School of Medicine and Associate Senior Vice President for the Health Sciences, appealed the Grievance Committee's decision in favor of Dr. Hartz to the Senior Vice President for Academic Affairs of Health Sciences and Provost of the University, Lestor A. Lefton on December 20, 2002. Mr. Lefton upheld the June 21, 2002 decision of the Executive Faculty Committee of the School of Medicine that tenure not be awarded to Dr. Hartz on March 19, 2003.

15. Dr. Hartz appealed to the Faculty, Tenure, Freedom, and Responsibility Committee ("FTFR"), which upheld the June 21, 2002 decision of the Executive Faculty Committee not to award tenure.

16. Scott Cowan, Ph.D., President of Tulane University, approved the FTFR decision, upholding the June 21, 2002 decision of the School of Medicine's Executive Faculty Committee not to award tenure (of which Tulane had notified Dr. Hartz on June 21, 2002 and again on July 16, 2002) on May 28, 2003.

17. As Tulane had previously notified Dr. Hartz in its July 16, 2002 letter, Dr. Hartz's Tulane employment terminated on June 30, 2003 (effective July 1, 2003), the end of the 2002-2003

academic year.

18. On August 22, 2003 Dr. Hartz filed a charge (number 270-2003-02777) with the United States Equal Employment Opportunity Commission ("EEOC") alleging sex discrimination in the denial of tenure and retaliation for engaging in protected activity under Title VII of the Civil Rights Act of 1964 as amended, 42 United States Code Section 2000e et seq. ("Title VII").

19. The Executive Faculty Committee's adverse decision, rendered June 20, 2002 and again on July 16, 2002, adversely affected Dr. Hartz's continued employment at Tulane. As a result of the Committee's decision, the 2002-2003 academic year was Dr. Hartz's terminal year at Tulane. (Tulane notified Dr. Hartz of the adverse decision(s) on June 21, 2002 and July 16, 2002, respectively.)

20. Jurisprudential authority directs that the time period for filing a charge with the EEOC begins to run from the notice of adverse action, not when the adverse action finally takes place. The 300 day time period for filing a charge with the EEOC may have begun with the notice of denial of tenure on June 21, 2002, or at the latest date, the second notice on July 16, 2002. (Although Dr. Hartz will assert that the time period did not begin until her employment ended on June 30, 2003; however, such an argument may well not be accepted by the court if Tulane and/or TUHC raise the issue in the action designated as C.A. No. 06-2977.

21. Mr. Farrugia began his legal representation of Dr. Hartz prior to April 17, 2003. Mr. Farrugia did not advise Dr. Hartz to file a charge with the EEOC prior to April 17, 2003. Mr. Farrugia did not advise Dr. Hartz to file an EEOC charge until sometime after Tulane terminated Dr. Hartz's employment on June 30, 2003 (effective July 1, 2003). Because of Mr. Farrugia's representation, Dr. Hartz filed an EEOC charge on August 22, 2003. If the 300 day filing period began to run on June 21, 2002, then Dr. Hartz's EEOC charge was filed 127 days too late.

22. If it is determined that Dr. Hartz's August 22, 2003 EEOC charge was not timely, such a determination will preclude Dr. Hartz from going forward with C.A.No. 06-2977. (Without a timely filed charge, which is a jurisdictional prerequisite under Title VII, the district court will lack jurisdiction over Dr. Hartz's Title VII claims). (Even if the court in C.A.No. 06-2977 construes the second notice by letter, dated July 16, 2002, as the date the charge filing period began to run, the charge filed on August 22, 2003 would nevertheless have been untimely.)

23. Also, whatever the determination in C.A.No. 06-2977 concerning the timeliness of Dr. Hartz's August 22, 2003 EEOC charge, Dr. Hartz could have filed a claim of discrimination under Louisiana's state anti-discrimination statute until June 21, 2003. June 21, 2003 is one year after Tulane notified Dr. Hartz she would not be awarded tenure. Unlike Title VII, there is no charge filing requirement as a jurisdictional prerequisite,

and suit under that statute would have been timely if filed within 1 year.

24. Mr. Farrugia never informed Dr. Hartz of her rights under Louisiana's state anti-discrimination statute and thus no timely filing was made under state law. If the court in C.A.No. 06-2977 construes the second notice letter, dated July 16, 2002, as the date Tulane provided to Dr. Hartz notice she would not be awarded tenure, then she would have had 1 year from that date, or July 16, 2003, to bring a state law based claim in state court. No timely filing under state law was filed by that date while Mr. Farrugia represented Dr. Hartz.

25. Mr. Farrugia failed to use reasonable care in representing and advising Dr. Hartz when he was representing her.

26. On July 16, 2003, Dr. Hartz sought additional legal counsel from CHOPIN, WAGAR, RICHARD, & KUTCHER, LLP, specifically Mr. Robert A. Kutcher, and his associate, Ms. Nicole Tiger, about how she should proceed with her claims against Tulane University School of Medicine, and TUHC.

27. On that date, July 16, 2003, (one year after the July 16, 2002 letter which provided Dr. Hartz with Tulane's second notice of denial of tenure) Dr. Hartz could have filed a timely action in state court alleging discrimination under the Louisiana anti-discrimination statute. Mr. Kutcher and Ms. Tiger failed to alert Dr. Hartz of such a deadline for filing suit. Mr. Kutcher and Ms. Tiger failed to alert Dr. Hartz that after this date, July 16, 2003, a claim for discrimination under state law would

prescribe, that is, be forever time barred.

28. Also, Mr. Kutcher and Ms. Tiger failed to point out to Dr. Hartz that Mr. Farrugia may have failed to alert her about the date by which she should have filed her EEOC charge in order that there would be no question as to the timeliness of the EEOC charge which could subsequently present an issue which would potentially bar her Title VII action. On July 16, 2003, when Mr. Kutcher and Ms. Tiger failed to advise Dr. Hartz of Mr. Farrugia's (possible) negligence, with respect to the EEOC charge, Dr. Hartz would have been able to assert a timely negligence claim against Mr. Farrugia regarding that matter. However, Mr. Kutcher and Ms. Tiger failed to use reasonable care in counseling and advising Dr. Hartz when she sought their legal advice.

29. On account of Mr. Kutcher and Ms. Tiger's failure to inform Dr. Hartz of Mr. Farrugia's (possible) negligence regarding the EEOC charge filing period, Dr. Hartz did not learn of Mr. Farrugia's negligence within the time period allowed for bringing a negligence claim against him regarding the EEOC charge issue, i.e., for the Title VI claims.

30. More than three years elapsed before Dr. Hartz was informed of Mr. Farrugia's (possible) negligence in representing her with respect to her Title VII claims.

31. As a result of the negligence of CHOPIN, WAGAR, RICHARD, & KUTCHER, LLP, specifically, Mr. Kutcher and Ms. Tiger, Dr. Hartz has suffered injuries, which include but are not

limited to: 1) loss of her right to proceed against her former employer(s) on a state law based discrimination claim, and the damages available to her in that action; and 2) the loss of her right to proceed against Mr. Farrugia concerning his negligence in representing her in her Title VII claims, and the damages available to her in that action.

32. Dr. Hartz's claim for malpractice is based on:

1) Mr. Farrugia's failure to inform Dr. Hartz that the time period for her to file an EEOC charge may have begun to run on June 21, 2002. Such a charge would have had to be filed no later than April 17, 2003;

2) Mr. Farrugia's failure to inform Dr. Hartz that the time period for her to file an EEOC charge may have begun to run on July 16, 2002. Such a charge would have had to be filed no later than May 12, 2003;

3) Mr. Farrugia's failure to inform Dr. Hartz that she could have filed a claim of discrimination under Louisiana's state anti-discrimination statute until June 21, 2003, or possibly July 16, 2003;

4. CHOPIN, WAGAR, RICHARD, & KUTCHER, LLP, specifically, Mr. Kutcher and Ms. Tiger's failure to inform Dr. Hartz that Farrugia had neglected to inform her that she could have filed a claim of discrimination under Louisiana's state anti-discrimination statute until June 21, 2003;

5. CHOPIN, WAGAR, RICHARD, & KUTCHER, LLP, specifically, Mr. Kutcher and Ms. Tiger's failure to inform Dr. Hartz to file a claim of discrimination under Louisiana's state anti-discrimination statute by July 16, 2003;

6. CHOPIN, WAGAR, RICHARD, & KUTCHER, LLP, specifically, Mr. Kutcher and Ms. Tiger's failure to inform Dr. Hartz that Farrugia neglected to inform her that the time period for her to file an EEOC charge may have begun to run on June 21, 2002, and that the EEOC charge would have had to be filed no later than April 17, 2003; and

7. CHOPIN, WAGAR, RICHARD, & KUTCHER, LLP, specifically, Mr. Kutcher and Ms. Tiger's failure to inform Dr. Hartz that Farrugia neglected to inform her that the time period for her to file an EEOC charge may have begun to run on July 16, 2002. Such a charge would have had to be filed no later than May 12, 2003.

33. Dr. Hartz was unaware of any possible malpractice

issues until she engaged undersigned counsel on May 31, 2006 to represent her in her claims against Tulane and TUHC. Thereafter, Dr. Hartz mailed certain documents to undersigned counsel. In reviewing those documents, on June 4, 2006, undersigned counsel alerted Dr. Hartz about the possibility that Tulane would assert as an affirmative defense that her August 22, 2003 EEOC charge was untimely. Undersigned counsel also informed Dr. Hartz that any state law based discrimination claim she may have had was now prescribed (i.e., time barred).

34. Under Louisiana law, a claim for malpractice must be filed within one year from when the person knew or should have known malpractice occurred, or within three years of the alleged malpractice. Otherwise, such a claim is thereafter preempted. Accordingly, Dr. Hartz may not wait until her suit designated as C.A.No. 06-2977 is resolved before asserting her claims of malpractice.

35. As a result of the negligence of Mr. Farrugia, Dr. Hartz has suffered injuries, which include but are not limited to: 1) the possible loss of her right to proceed against her former employer(s) on a Title VII claim; and 2) the possible loss of her right to proceed against her former employer(s) on a state law based discrimination claim, and the damages available to her in those actions.

36. Dr. Hartz did not learn of Mr. Farrugia's negligence within the time period allowed for bringing a negligence claim against him regarding the EEOC charge issue, i.e., for the Title

VI claims.

37. The time period for bringing an action against Mr. Farrugia for failure to inform Dr. Hartz that she could have filed a claim of discrimination under Louisiana's state anti-discrimination statute until June 21, 2003 has not lapsed, i.e., June 21, 2006.

38. Similarly, The time period for bringing an action against CHOPIN, WAGAR, RICHARD, & KUTCHER, LLP, specifically, Mr. Kutcher and Ms. Tiger's, for failure to inform Dr. Hartz that Farrugia had neglected to inform her that she could have filed a claim of discrimination under Louisiana's state anti-discrimination statute until June 21, 2003; failure to inform Dr. Hartz to file a claim of discrimination under Louisiana's state anti-discrimination statute by July 16, 2003; failure to inform Dr. Hartz that Farrugia neglected to inform her that the time period for her to file an EEOC charge may have began to run on June 21, 2002; and failure to inform Dr. Hartz that Farrugia neglected to inform her that the time period for her to file an EEOC charge may have began to run on July 16, 2002, is July 16, 2006.

39. On June 8, 2003, Dr. Hartz brought a civil action (C.A.No. 06-2977) against The Administrators of the Tulane Educational Fund, ("Tulane"), which operates the Tulane University School of Medicine; and Tulane University Hospital and Clinic ("TUHC") alleging discrimination against Dr. Hartz on the basis of her sex and retaliation against her for having

previously engaged in protected activity by filing a charge with the Equal Employment Opportunity Commission and also pursuing redress for sex discrimination through the university's internal channels.

40. Dr. Hartz has alleged that this action was in violation of 42 United States Code, Section 2000e-2(a) and 42 United States Code, Section 2000e-3(a).

41. The Equal Employment Opportunity Commission issued Dr. Hartz a right to sue letter dated March 15, 2006.

42. Dr. Hartz's suit (i.e., C.A. No. 06-2977) was filed on June 8, 2006, within 90 days of receipt of the EEOC's "right to sue" notice for the charge numbered 270-2003-02777. She exhausted her administrative remedies.

43. In the suit designated as C.A. No. 06-2977, Dr. Hartz has sought reinstatement to the rank of Professor of Surgery with tenure, recovery of actual damages - including back pay and (if reinstatement is not feasible) front pay, compensatory damages, punitive damages, costs, legal interest, and attorneys' fees.

44. Dr. Hartz has alleged that as a result of the intentional acts of discrimination and retaliation by Tulane, Dr. Hartz has suffered damage to her reputation, loss of income, emotional distress, mental anguish, humiliation, and pain and suffering.

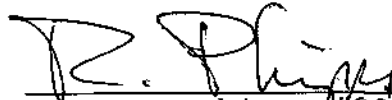
45. As a result of the negligent events referred to herein, Dr. Hartz has suffered mental anguish and emotional distress in addition to financial loss incurred.

46. Dr. Hartz is therefore entitled to damages for the items set out above in such amounts as are reasonable in the premises.

47. In the suit designated as C.A. No. 06-2977, Dr. Hartz has also alleged that Tulane's denial of tenure is also a breach of contract and that she has de facto, or automatic, tenured. While such an assertion is alleged in good faith, relevant jurisprudence holds there is no de facto tenure at Tulane. Thus Dr. Hartz's principal claims are those based on discrimination under Title VII and state law, and retaliation under Title VI.

WHEREFORE, plaintiff, Renee S. Hartz, prays that defendants, Victor R. Farrugia, CHOPIN, WAGAR, RICHARD, & KUTCHER, LLP, Robert Kutcher, and Nicole Tiger be cited to appear and answer this complaint, and after due proceedings be had, there be judgment herein in her favor and against defendants, Victor R. Farrugia, CHOPIN, WAGAR, RICHARD, & KUTCHER, LLP, Robert Kutcher, and Nicole Tiger for damages as requested herein; together with all costs and legal interest. Plaintiff, Renee S. Hartz, further prays for reasonable attorneys' fees, costs and expenses incurred in this matter; and for all and any other such further relief as justice may deem appropriate and require.

Respectfully submitted,



Roger D. Phipps #20326
PHIPPS & PHIPPS
541 Exposition Boulevard
New Orleans, Louisiana 70118
(504) 899-0763

Service Information -- Notice of Lawsuit and Service Waiver by
U.S. Certified Mail Return Receipt Requested:

1) Victor R. Farrugia, Esq.
228 St. Charles Ave. Suite 1100
New Orleans, LA 70130-2601;

2) CHOPIN, WAGAR, RICHARD, & KUTCHER, LLP
Managing Partner
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3) Robert A. Kutcher
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