Rogoff v Long Is. Univ.
2023 NY Slip Op 32273(U)
July 6, 2023
Supreme Court, Kings County
Docket Number: Index No. 510388/2019
Judge: Wayne P. Saitta
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 6th day of July 2023.

P R E S E N T:

HON. WAYNE P. SAITTA,
Justice.

---X

EDWARD ROGOFF,
Plaintiff,

-against-

LONG ISLAND UNIVERSITY,
Defendant.

---X

DECISION/ORDER

Index No. 510388/2019

Mot. Seq. No. 5

The following e-filed papers read herein:	NYSCEF Doc. Nos.:
Notice of Motion, Affirmations, Memorandum of Law, and Exhibits Annexed	76-100
Affirmations (Affidavits) in Opposition, Memorandum of Law, and Exhibits Annexed	101-121
Reply Memorandum of Law and Response	122-123
Post-Argument Letter Submissions	124-127, 128

In this action to recover damages for breach of contract, age discrimination, and unlawful retaliation, defendant Long Island University ("defendant") moves for an order, pursuant to CPLR 3212 (b), dismissing the complaint of plaintiff Edward Rogoff ("plaintiff"). Plaintiff opposes defendant's motion.

Background

By letter, dated July 6, 2015, plaintiff, age 63, entered into a three-year agreement with defendant to be employed as Dean of its Brooklyn School of Business ("BSB") at the specified annual salary, effective August 27, 2015 (the "administrative-employment

contract").[1] The administrative-employment contract provided (in unnumbered ¶ 7 thereof) that "[o]ther terms and conditions of employment will be in accordance with University [*i.e.*, defendant's] policy," as more fully reproduced in the margin.[2]

Approximately 2-1/2 years later, on March 22, 2018, plaintiff was notified that he would cease acting as Dean of BSB as of June 1, 2018.[3] Plaintiff's successor, Raymond Pullaro ("Pullaro"), age 49 and approximately 17 years junior to plaintiff, was appointed as <u>Interim Dean</u> of the BSB effective June 1, 2018. Approximately three years later, in September 2021, Pullaro was replaced by Christopher Bates ("Bates"), age 65 and approximately 5 years junior to plaintiff, as <u>Interim Dean</u> of the BSB. Eight months later,

---

[1] The administrative-employment contract is titled "Superseding Appointment Letter – Change in Effective Date" (NYSCEF Doc. No. 84). The administrative-employment contract, by its express terms, superseded the initial administrative-employment contract, dated March 19, 2015 (NYSCEF Doc. No. 83).

[2] The full text of the ten-paragraph administrative-employment contract reads in full, as follows (paragraph breaks have been omitted and replaced with the paragraph-numbered symbol):

> "¶ [1] I [as the Interim Executive Director of Human Resources] am pleased to offer you the following full-time administrative appointment at LIU Brooklyn. ¶ [2] Position: Dean of the School of Business[.] ¶ [3] Effective Date: August 27, 2015, through August 31, 2018[.] ¶ [4] Annual Salary: $255,000[.] ¶ [5] Title of Supervisor: Vice President for Academic Affairs[.] ¶ [6] Primary Responsibilities: As delegated by the Vice President[.] ¶ [7] <u>Other terms and conditions of employment will be in accordance with University [i.e., defendant's] policy. You will be eligible for a bonus, whose terms and conditions will be determined after discussion between you and the Vice President for Academic Affairs. The University will set aside $5,000 for documented office moving expenses.</u> ¶ [8] All new employees are required to file a Department of Homeland Security U.S. Citizenship and Immigration Services Employment Eligibility Verification Form I-9, which must be verified by a campus representative before you may begin employment. ¶ [9] If you accept this appointment, please retain the original, sign and date all copies, and return the copies to the Office of Human Resources, Long Island University, University Center, 700 Northern Blvd, Brookville, NY 11548 within two weeks. ¶ [10] I look forward to your contributing to the progress of the University" (underlining added).

[3] Affirmation of Randy Burd, Senior Vice President of Academic Affairs, dated January 6, 2023 (NYSCEF Doc. No. 98), ¶ 8.

in April 2022, Bates was replaced by Graziela Fusaro ("Fusaro"), age 51 and approximately 19 years junior to plaintiff, as Dean of the BSB.[4] Unlike plaintiff, neither Fusaro, nor her predecessors, Pullaro and Bates, hold (or held) a doctorate degree.

To return to the chronology of events. By email, dated May 30, 2018, plaintiff was notified that his salary as Dean would "remain in effect until August 30, 2018."[5] By letter, also dated May 30, 2018, plaintiff was offered to "become a member of the [BSB] faculty effective September 1, 2018 at the rank of Full Professor[[6]] and annual salary of $86,319.64" (the "proposed faculty-employment contract").[7] By email, dated June 8, 2018, plaintiff rejected the terms of the proposed faculty-employment contract, explaining that it "does not reflect my contract with the University and existing University policy in such situations"; namely: (1) the "one-year paid sabbatical at my current salary," and (2) the "continuing employment as a Professor at no less than 75% of my current salary going forward".[8] Defendant, by a series of written communications to plaintiff, denied his request to be granted the extracontractual terms. By email, dated August 30, 2018, plaintiff was notified that "[n]o sabbatical request has been approved

[4] *See* Plaintiff's EBT Tr., page 67, line 9 to page 69, line 21; Affirmation of University Counsel, Elizabeth Cheung-Gaffney, dated January 6, 2023 (NYSCEF Doc. No. 99), ¶ 4 (a)-(c).

[5] Email to plaintiff from Denise Dick, Vice President, Human Resources & Talent Management, dated May 30, 2018, and timed at 1:28 p.m. (NYSCEF Doc. No. 87).

[6] By letter, dated April 14, 2015, plaintiff was notified that he was "awarded tenure effective August 1st, 2015" (NYSCEF Doc. No. 86) (footnote by the Court).

[7] Letter to plaintiff from Pamela Duffy, Executive Director of Human Resources, dated May 30, 2018 (NYSCEF Doc. No. 87), at page LIU000549.

[8] Email from plaintiff to Denise Dick, dated June 8, 2018, and timed at 9:47 a.m. (NYSCEF Doc. No. 88), at page LIU000562.

for the upcoming academic year, and you will not be on sabbatical. You are expected to teach a full workload in both the fall and spring semesters."[9] By letter, also dated August 30, 2018, plaintiff was requested to confirm his return to his tenured faculty position beginning September 1, 2018, in the BSB in the Department of Managerial Sciences. The letter stated that his base salary would be $86,319.64 and that If he accepted the appointment, he should sign and return the letter within 48 business hours."[10] Although plaintiff did not sign the proposed faculty-employment contract, it is undisputed that he commenced teaching as a faculty member in September 2018 and for some period of time, that is unclear from the record, he was paid at a rate of $86,319.64.[11]

At a face-to-face meeting with a member of defendant's Board of Trustees, Ron Silvestri ("Trustee Silvestri"), held off-campus in the early part of September 2018,[12] plaintiff handed to Trustee Silvestri a memorandum, titled "Areas of Danger to the Board" (NYSCEF Doc. No. 93) ("plaintiff's memo of concerns"). Plaintiff's memo of concerns criticized defendant's high-ranking administration, and particularly defendant's

---

[9] Email to plaintiff from Ray Pullaro, Interim Dean of BSB, dated August 30, 2018, and timed at 4:26 p.m. (NYSCEF Doc. No. 90), at page LIU000620.

[10] Letter to plaintiff from Lisa Araujo, Chief Human Resources Officer, dated August 30, 2018 (NYSCEF Doc. No. 91), at page LIU000192.

[11] Defendant's Statement of Material Facts Pursuant to Rule 202.8-g, dated January 6, 2023 (NYSCEF Doc. No. 77), ¶ 68; Plaintiff's Rule 202.8-g Response to Defendant' Statement of Material Facts and Affirmative Statement of Material Facts, dated February 17, 2023 (NYSCEF Doc. No. 102), ¶ 68.

[12] Plaintiff's meeting with Trustee Silvestri was arranged (and also attended) by Professor Emeritus Myrna Fischman. Affidavit of Myrna Fischman, Professor of Emeritus at defendant, dated May 17, 2022 (NYSCEF Doc. No. 108), ¶¶ 5-12.

President Kimberly Cline ("President Cline"), for what he perceived to have been her serious failings across defendant's entire university.

Following Plaintiff's meeting with Trustee Silvestri, plaintiff was notified that his "status as a faculty member was being unilaterally changed by from Full Professor to Adjunct [F]aculty," with "a reduction of his faculty salary and a loss of benefits."[13] At some point thereafter, plaintiff's demotion was revoked by defendant.[14] Plaintiff's current status with defendant is that of a tenured full professor."[15]

By letter, dated October 11, 2018, defendant reiterated that "the terms and conditions of your appointment as Dean were set forth in writing. They did not include a sabbatical or stipulation regarding salary if you should become a faculty member. The terms were that you would be a tenured full professor."[16]

On May 9, 2019, plaintiff commenced this action alleging claims sounding in: (1) breach of the administrative-employment contract (first cause of action); (2) age discrimination under the State and City Human Rights Laws (*see* Executive Law art 15 ["NYSHRL"] and Administrative Code § 8-101 et seq. ["NYCHRL"], respectively)

---

[13] Affidavit of Linette Williams, then Assistant Dean of BSB, dated June 3, 2023 (NYSCEF Doc. No. 110), ¶ 8.

[14] *Id.*, ¶ 9.

[15] Affirmation of Randy Burd, Senior Vice President of Academic Affairs, ¶ 10. The record is unclear whether plaintiff's course load "as a tenured full professor" ever exceeded (or currently exceeds) that of a full-time tenured professor, as provided for in the collective bargaining agreement. Plaintiff's EBT tr (NYSCEF Doc. No. 94) at page 89, line 19 to page 91, line 14.

[16] Letter to plaintiff from Lisa Araujo, Chief Human Resources Officer, dated October 11, 2018 (NYSCEF Doc. No. 92), at page LIU000191.

(second and third causes of action); and (3) unlawful retaliation under the NYSHRL and NYCHRL (fourth and fifth causes of action).[17] Plaintiff seeks compensatory damages of at least $395,000, as well as punitive damages (Complaint, Wherefore Clause). In lieu of an answer, defendant initially moved to dismiss the complaint as barred by documentary evidence and for failure to state a cause of action, pursuant to CPLR 3211 (a) (1) and (7), respectively. By decision/order, dated January 10, 2020, the Court (Sweeney, J.) denied defendant's pre-answer motion in its entirety. Addressing the documentary-evidence branch of defendant's motion, Justice Sweeney held that defendant had not established, at the pre-answer stage of litigation, that the parties intended the letter to embody the entire agreement between them and that the plaintiff is barred from introducing evidence extrinsic to the letter to establish the terms of the contract."(*Rogoff v Long Is. Univ.*, 2020 NY Slip Op 30147[U] [Sup Ct, Kings County 2020], *affd* 208 AD3d 700 [2d Dept 2022]). Addressing the remaining branch of defendant's motion which is for dismissal for failure to state a cause of action, Justice Sweeney rejected defendant's sweeping contention that plaintiff's relief was limited to that afforded by CPLR article 78 (*id.*). Rather, Justice Sweeney held that the complaint adequately pleaded the aforementioned causes of action (*id.*). On defendant's appeal, the Second Judicial Department affirmed Justice Sweeney's decision/order in its entirety, albeit without addressing the applicability (or not) of the parol-evidence rule to expand on the terms of the administrative-employment contract (*see Rogoff v Long Is. Univ.*, 208 AD3d 700 [2d Dept 2022]). Rather, the Second

[17] Complaint dated May 7, 2019 (NYSCEF Doc. No. 79).

Judicial Department held, in addressing defendant's appeal from the denial of the documentary-evidence branch of its motion, that "[defendant] failed to submit documentary evidence which utterly refuted the plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (*Rogoff*, 208 AD3d at 701 [internal quotation marks omitted]).

Following Justice Sweeney's denial of defendant's motion to dismiss, defendant interposed its answer, dated March 6, 2020 (NYSCEF Doc. No. 80). After discovery was completed[18] and a note of issue was filed, defendant served the instant motion for summary judgment. On May 3, 2023, the Court heard oral argument, reserving decision.

Plaintiff's Breach-of-Contract Claim

"The elements of a cause of action to recover damages for breach of contract are the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of its contractual obligations, and resulting damages" (*Ayers v City of Mount Vernon*, 176 AD3d 766, 769 [2d Dept 2019]). "It is well settled that a contract is to be construed in accordance with the parties' intent, which is generally discerned from the four corners of the document itself" (*MHR Capital Partners LP v Presstek, Inc.*, 12 NY3d 640, 645 [2009]). "Thus, a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms"

[18] By order, dated March 1, 2021, the Second Judicial Department denied defendant's motion to stay discovery and other proceedings in this action pending a hearing and determination of its appeal from Justice Sweeney's decision/order (*see Rogoff v Long Is. Univ.*, 2021 NY Slip Op 62496[U] [2d Dept 2021]).

(*Greenfield v Philles Records, Inc.*, 98 NY2d 562, 569 [2002]). "It is [further] well settled that extrinsic and parol evidence is not admissible to create an ambiguity in a written agreement which is complete and clear and unambiguous upon its face" (*W.W.W. Assoc., Inc. v Giancontieri*, 77 NY2d 157, 163 [1990] [internal quotation marks omitted]). "A contract is unambiguous if the language it uses has a definite and precise meaning, unattended by danger of misconception in the purport of the agreement itself, and concerning which there is no reasonable basis for a difference of opinion" (*Greenfield*, 98 NY2d at 569 [internal quotation marks and alteration omitted]). "Thus, if the agreement on its face is reasonably susceptible of only one meaning, a court is not free to alter the contract to reflect its personal notions of fairness and equity" (*id*. at 569-570).

Here, defendant has established, prima facie, that it did not breach the administrative-employment contract when it failed to provide plaintiff with the sabbatical/administrative leave and the enhanced faculty salary (*i.e.*, the extracontractual terms). Contrary to plaintiff's initial contention, it was not contractually improper for defendant to remove plaintiff from his position as Dean before the expiration of his three-year administrative appointment, so long as (and this was the case here) defendant paid him his full salary as Dean for his entire three-year appointment.

In opposition to defendant's prima facie showing, plaintiff has failed to raise a triable issue of fact. Plaintiff maintains that a single sentence in unnumbered ¶ 7 of the administrative-employment contract – that "[o]ther terms and conditions of employment

will be in accordance with University policy" (the "other terms and conditions" sentence) – incorporates into (or implies from his pre-contract negotiations with former Provost Kane[19]) the extracontractual terms. In so maintaining, plaintiff ignores the entirety of unnumbered ¶ 7 of the administrative-employment contract which (on account of its significance) is worth restating in full:

> "[¶ 7] Other terms and conditions of employment will be in accordance with University policy. You will be eligible for a bonus, whose terms and conditions will be determined after discussion between you and the Vice President for Academic Affairs. The University will set aside $5,000 for documented office moving expenses."

As the Court of Appeals cautioned, "[t]he meaning of a writing may be distorted where undue force is given to single words or phrases" (*Empire Props. Corp. v Manufacturers Tr. Co.*, 288 NY 242, 248 [1942]), which is exactly what plaintiff urges the Court to do here by isolating the "other terms and conditions" sentence from the remainder of the above-quoted paragraph. When the "other terms and conditions" sentence is read in conjunction with the remainder of the above-quoted paragraph, the clear and unambiguous import of that entire paragraph was to provide standard, <u>non-extraordinary</u> benefits appropriate for plaintiff as a <u>newly incoming</u> administrative member who had <u>not previously</u> served on defendant's faculty.[20]

---

[19] *See* former Provost Jeffrey Kane's EBT tr (NYSCEF Doc. No. 96) at page 15, line 14 to page 16, line 24; page 43, line 19 to page 45, line 6; page 75, line 5 to page 76, line 24; page 91, line 9 to page 92, line 20; page 97, lines 18-24; *see also* Affidavit of Mary Lee Kelly, former Interim Director of Human Resources, sworn to on April 21, 2022 (NYSCEF Doc. No. 109), ¶¶ 10-11.

[20] In that regard, the spreadsheet of Deans who (like plaintiff) stepped down to faculty position in the 11-year, 7-month period between March 19, 2010, and October 19, 2021, at defendant's university, is

(footnote continued)

Further, where, as here, the administrative-employment contract was "negotiated between sophisticated . . . business people negotiating at arms['] length, . . . courts should be extremely reluctant to interpret an agreement as impliedly stating something which the parties have neglected to specifically include" (*Global Reins. Corp. of Am. v Century Indem. Co.*, 30 NY3d 508, 518-519 [2017] [internal quotation marks omitted]). Plaintiff, as the author/co-author of at least four books on entrepreneurship and as a holder of a Ph. D. degree in Management/Economics,[21] was a sophisticated business person.

Contrary to plaintiff's further contention, Justice Sweeney's ruling, issued in the context of defendant's pre-answer motion to dismiss, that the administrative-employment contract was a non-integrated contract, does not constitute law of the case. "The doctrine of law of the case applies only to legal determinations that were necessarily resolved on the merits in the prior decision" (*Gilligan v Reers*, 255 AD2d 486, 487 [2d Dept 1998] [internal quotation marks omitted]). The denial of the branch of defendant's pre-answer motion to dismiss on the basis of documentary evidence under CPLR 3211 (a) (1) did not constitute law of the case or an adjudication on the merits (*see Rosen v Mosby*, 148 AD3d 1228, 1233 [3d Dept 2017], *lv dismissed* 30 NY3d 1037 [2017]; *see also Moses v*

---

significant (NYSCEF Doc. No. 99). The spreadsheet lists nine deans (including plaintiff) who stepped down from Dean to return to faculty during that period. With the exception of plaintiff, all other eight Deans had previously served as faculty members at defendant's university <u>before</u> ascending to Deanship (the "faculty-to-Dean ascension"). Of the eight Deans who had undergone the faculty-to-Dean ascension prior to stepping down from Deanship to return to faculty, six Deans (upon returning to faculty) received one-year sabbatical/administrative leaves, one Dean received a three-month administrative leave, and one Dean did not receive a sabbatical/administrative leave. The content/accuracy of the spreadsheet is not disputed by plaintiff.

[21] Plaintiff's Curriculum Vitae (NYSCEF Doc. No. 121).

Savedoff, 96 AD3d 466, 468 [1st Dept 2012] ["the law of the case doctrine does not apply when a motion to dismiss is followed by a summary judgment motion"]).

Lastly, it appears to have been a standard practice in the field of academics to expressly specify the compensation and other terms upon an administrator's transition to faculty. In that regard, the First Judicial Department's decision in *Monaco v New York Univ.*, 204 AD3d 51 (2022), is instructive. There, one of the plaintiffs (Professor Herbert Samuels) entered into the administrative-employment contract which (unlike the instance with plaintiff here) specifically addressed his compensation in the event of his transition from administration to faculty:

> "If, in the future, you should step down as Chair of Pharmacology but remain on the faculty [of the School of Medicine], your salary will be equivalent to your current salary ($235,226) excluding $10,000 for your role as Director of Endocrinology, adjusted for cost of living increases during the time you were Chairman. Your benefits will be equivalent to those of a tenured Professor of Pharmacology or tenured Professor of Medicine which are applicable at that time."

Monaco, 204 AD3d at 66 n 4 (internal quotation marks omitted) (referred to in the *Monaco* decision as the "2001 contract").

Thereafter, NYU reduced Professor Samuels's salary on the grounds that he had failed to meet the subsequently promulgated salary policy for its research faculty, known as the "Required Extramural Funding" policy (the "REF policy"), which went in effect in 2010. Professor Samuels challenged his salary reduction pursuant to the REF policy. On appeal from the denial of Professor Samuels's motion for summary judgment on his breach-of-contract claim, the First Judicial Department reversed, holding (at page 65) that "NYU breached the terms of the '2001 Contract' when it reduced Professor Samuels's

salary pursuant to the REF policy and that he is entitled to summary judgment on this claim." The appellate court was adamant in its ruling (at page 65) that Professor Samuels was entitled to his agreed-upon salary, despite the interim enactment of the REF policy and further despite the interim elimination of his Department of Pharmacology, emphasizing that: "his continued association with NYU by remaining on the faculty after he stepped down as chairman due to the elimination of his department requires NYU to comply with the salary terms set forth in his [2001] contract."

Here, defendant is entitled to the dismissal of plaintiff's breach-of-contract claim under the totality of facts giving rise to his claim (*see Weiner v McGraw-Hill, Inc.*, 57 NY2d 458, 466-467 [1982] ["it is not (the employer's) subjective intent, nor any single act, phrase or other expression, but the totality of all of these, given the attendant circumstances, the situation of the parties, and the objectives they were striving to attain, which will control"] [internal quotation marks omitted]).

Plaintiff's Age-Discrimination Claim

Plaintiff next complains that defendant discriminated against him on the basis of age by subjecting him to the significantly adverse employment actions when, in the span of approximately eight months from March 2018 through approximately October 2018, he was prematurely and abruptly ousted from Deanship and relegated to a non-tenured adjunct-instructor position (collectively, the "ouster/demotion").[22] Although defendant

[22] The term "ouster/demotion" as used in this decision/order includes: (1) defendant's replacement of plaintiff with Interim Dean Pullaro who was approximately 17 years junior to plaintiff, effective June 1,
(footnote continued)

subsequently paid plaintiff for the full duration of his appointment as Dean and ultimately reinstated him to a tenured faculty position as professor, the ouster/demotion allegedly ruined his reputation/status at the BSB, ended his career as an academic elsewhere (other than at the BSB), and injured his physical/mental health.[23]

"Under the law applicable here,[[24]] a plaintiff alleging discrimination in employment in violation of the [New York State Human Rights Law or] NYSHRL must establish that (1) she or he is a member of a protected class, (2) she or he was qualified to hold the position, (3) she or he suffered an adverse employment action, and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination" (*Gregorian v New York Life Ins. Co.*, 211 AD3d 711, 712 [2d Dept 2022]). "To prevail on a motion for summary judgment dismissing an NYSHRL cause of action, a defendant must demonstrate either plaintiff's failure to establish every element of intentional discrimination, or, having offered legitimate, nondiscriminatory reasons for

---

2018; and (2) defendant's replacement of Pullaro's successor with Dean Fusaro who was approximately 19 years junior to plaintiff in April 2022.

[23] Plaintiff's EBT tr at page 106, line 16 to page 109, line 11; page 111, line 10 to page 115, line 10. *See also* plaintiff's EBT tr at page 117, line 4 to page 118, line 2 (testifying that "the age discrimination . . . greatly damaged [his] career . . . and effectively ended it . . . [making] LIU the last stop on [his] career""; further testifying that "this stress related [series of events] . . . really . . . turned [his] life upside down and introduced a level of vulnerability and anxiety that [he had] not experienced in a long time").

[24] The NYSHRL "has been amended to also require an independent liberal analysis to accomplish remedial purposes, as well as narrow construction of exceptions and exemptions (*see* Executive Law § 300, as amended by L 2019, ch 160, § 6). However, that amendment was made to be effective August 12, 2019 (*see* L 2019, ch 160, § 16), and only applies to claims filed after the effective date (*see* L 2019, ch 160, § 16 [d]). Since . . . plaintiff's claims were filed prior to the amendments, [the Court] analyze[s] [his] state law claims under the standard as it existed at the time [his] claims were filed" (*Golston-Green v City of New York*, 184 AD3d 24, 45 n 1 [2d Dept 2020]) (footnote by the Court).

[the] challenged actions, the absence of a material issue of fact as to whether [the] explanations were pretextual" (*id.* [internal quotation marks omitted]).

Under the New York City Human Rights Law or NYCHRL, a plaintiff must establish that she or he was "subject to an unfavorable change or treated less well than other employees on the basis of a protected characteristic" (*Golston-Green v City of New York*, 184 AD3d 24, 38 [2d Dept 2020]). "Under the NYCHRL, unlawful discrimination must play 'no role' in an employment decision" (*Ellison v Chartis Claims, Inc.*, 178 AD3d 665, 668 [2d Dept 2019], *lv dismissed* 35 NY3d 997 [2020]).

Here, the record – including (but not limited to) the conflicting pretrial testimony of plaintiff and that of President Cline, as well as the portion of plaintiff's memo of concerns titled "EEOC: Race and Age [I]ssues" – raises triable issues of fact as to whether defendant discriminated against plaintiff on the basis of age in violation of the NYSHRL and NYCHRL, and thus sufficient for his age-discrimination claim, insofar as predicated on the ouster/demotion, to go forward (*see Ferrante v American Lung Assn.*, 90 NY2d 623, 631 [1997]; *Krebaum v Capital One, N.A.*, 138 AD3d 528, 528 [1st Dept 2016]; *Listemann v Philips Components*, 13 AD3d 494 [2d Dept 2004]; *see generally 300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 183 [1978] ["discrimination is rarely so obvious or its practices so overt that recognition of it is instant and conclusive, it being accomplished usually by devious and subtle means"]).

Plaintiff's Unlawful-Retaliation Claim

Likewise, the record is adequate for plaintiff's unlawful-retaliation claim under the NYSHRL and NYCHRL to go forward, insofar as predicated on the ouster/demotion.

The evidence (when viewed in a light most favorable to plaintiff as the non-movant) shows that: (1) he engaged in a protected activity (namely, his complaint of age discrimination, among other topics, to Trustee Silvestri); (2) defendant was aware that he participated in such an activity; (3) he was demoted to the rank of adjunct instructor; and (4) there is a causal connection between the protected activity and the adverse action. The temporal proximity of plaintiff's complaint to Trustee Silvestri and his swift demotion less than one month later reflects the requisite causal connection (*see Krebaum*, 138 AD3d 528, 528-529). Although plaintiff was subsequently reinstated to the rank of full professor, it is for the fact-finder at trial – rather than for this Court at the summary-judgment stage – to assess the merits and value of plaintiff's alleged reputational loss and other claimed damages.

The Court has considered the parties' remaining contentions and found them unavailing.

WHEREFORE, it is hereby ORDERED that defendant's motion is granted solely to the extent that plaintiff's breach of contract claim in the first cause of action of his complaint is dismissed; and it is further

ORDERED that, that portion of the motion seeking dismissal of plaintiff's age-discrimination and unlawful-retaliation claims is denied.

This constitutes the decision/order of the Court.

E N T E R,

J. S. C.