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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

DAVID W. PETERS, Plaintiff and Appellant, v. PERRIS UNION HIGH SCHOOL DISTRICT, Defendant and Respondent.	E053801 (Super.Ct.No. RIC529128) OPINION

APPEAL from the Superior Court of Riverside County. John W. Vineyard, Temporary Judge. (Pursuant to Cal. Const., art VI, § 21.) Affirmed.

Jeglin & Wright and Marvin H. Jeglin for Plaintiff and Appellant.

Atkinson, Andelson, Loya, Ruud & Romo, James C. Romo and Edward B. Reitkopp for Defendant and Respondent.

I. INTRODUCTION

Plaintiff and appellant David W. Peters brought suit against defendant and respondent Perris Union High School District for breach of contract and declaratory relief concerning his rights under the allegedly breached contract.

Defendant moved for summary judgment. The trial court granted the motion because the undisputed facts proved there had been no breach of contract and that plaintiff's declaratory relief claim was redundant to his breach of contract claim. Plaintiff appeals the judgment following the grant of summary judgment in favor of defendant, contending there were triable issues of material fact regarding both of his claims.

The provision of the contract that forms the basis of plaintiff's complaint directly contradicts California Code of Regulations, title 5, section 80303, subdivision (c).[1] Thus, we conclude that provision is void as contrary to public policy and unenforceable. We affirm the judgment in favor of defendant.

II. FACTS AND PROCEDURAL BACKGROUND

Defendant employed plaintiff as a high school teacher. In April 2008, defendant served a Notice of Intent to Dismiss and Statement of Charges (the Accusation) on plaintiff. The Accusation charged plaintiff with unprofessional conduct in violation of Education Code section 44932, subdivision (a)(1); dishonesty in violation of Education Code section 44932, subdivision (a)(3); evident unfitness for service in violation of Education Code section 44932, subdivision (a)(5); and "[p]ersistent violation of or refusal

[1] All further references to California Code of Regulations, title 5, section 80303 are hereinafter referred to as section 80303.

to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her," in violation of Education Code section 44932, subdivision (a)(7). The Accusation listed 14 separate instances of plaintiff's inappropriate behavior, including the facts that plaintiff had been suspended multiple times for, among other things, his use of the school e-mail system to send a sexually suggestive message regarding a female student and several messages cursing and disparaging other staff members. The Accusation stated that plaintiff had continued his use of the school e-mail system for personal purposes; engaged in threatening behavior toward other staff members; used class time inefficiently; and refused to obey the directives issued by the school principal.

In 2008, plaintiff filed a lawsuit against defendant.[2] In September 2008, plaintiff and defendant entered into a Settlement Agreement and General Release (the Agreement), which provided, in relevant part: "[Defendant] shall withdraw the Accusation against [plaintiff] currently pending before the California Office of Administrative Hearings. Furthermore, [defendant] shall see that said Accusation shall be discarded and placed in a sealed envelope never to be opened by anyone except *under order of court of mutual agreement of the parties. . . .*" In return, plaintiff agreed to dismiss his lawsuit against defendant.

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[2] The complaint in that action is not included in the record on appeal.

Plaintiff later discovered that defendant was required by law to file the Accusation with the California Commission on Teacher Credentialing (CCTC). He filed a complaint with the CCTC against defendant, alleging a Brown Act violation, Labor Code violations, and "failure of the District to provide [section] 80303 notice about the change in [his] status." Thereafter, a CCTC investigator requested that plaintiff send him a copy of the Accusation, and plaintiff responded by sending an unsigned copy. The investigator then requested that defendant send a signed copy of the Accusation, and defendant complied with the request.

Plaintiff filed his complaint against defendant in the current action. He alleged that defendant's disclosure of the signed Accusation to the CCTC created causes of action for declaratory relief and breach of contract. Defendant filed a motion for summary judgment on the grounds that plaintiff could not establish a breach of contract because he had not suffered damages; the doctrines of waiver and estoppels provided a defense; and defendant's action was de minimis. Following additional briefing and a hearing, the trial court granted the motion and entered judgment in favor of defendant. Plaintiff appealed, and on our own motion, we requested additional briefing on the issue of whether the portion of the Agreement on which plaintiff relies was void and unenforceable as contrary to public policy.

III. DISCUSSION

A. Standard of Review

"In reviewing the trial court's decision on a motion for summary judgment, we independently assess the supporting and opposing papers according to the same three-

step process required of the trial court." (*Katz v. Chevron Corp*. (1994) 22 Cal.App.4th 1352, 1364.) First, we identify the issues raised by the pleadings. Second, we determine whether the moving party has established facts that negate the opponent's claim and justify a judgment in the movant's favor. Third, we determine whether the opposition demonstrates the existence of a triable issue of material fact. (*Ibid*.) Further, if "there is sufficient legal ground to support the granting of the motion, the order will be upheld regardless of the grounds relied upon by the trial court. [Citation.]" (*Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450, 1457.)

The pleadings in this case alleged breach of contract and declaratory relief. As discussed below, we hold that the nondisclosure provision is void as contrary to public policy. As a valid contract is essential to both of plaintiff's claims, he has failed to state a cause of action. Thus, we affirm summary judgment in favor of defendant. (See *Commonwealth Mortgage Assurance Co. v. Superior Court* (1989) 211 Cal.App.3d 508, 518 [holding that a failure to state a cause of action is a proper ground for granting summary judgment].)

B. Whether the Nondisclosure Provision of the Agreement Is Void as Contrary to Public Policy

Although the issue of the illegality of the nondisclosure provision was not raised by either party, "'[i]t is . . . well settled that if the question of illegality develops during the course of a trial, a court must consider it whether pleaded or not, "and when a court discovers a fact which indicates that the contract involved is illegal and ought not to be enforced, it will, on its own motion, instigate an inquiry in relation thereto . . . Whenever

the evidence discloses the relations of the parties to the transaction to be illegal and against public policy, it becomes the duty of the court to refuse to entertain the action. . . .” [Citation.]’ [Citation.]” (*Russell v. Soldinger* (1976) 59 Cal.App.3d 633, 642; see also *Santoro v. Carbone* (1972) 22 Cal.App.3d 721, 732 [“Even though the parties did not plead illegality or raise the issue in the trial court, if the case made out by plaintiff or defendant shows illegality, it becomes the duty of this court, *sua sponte*, to refuse enforcement of the transaction”], disapproved on other grounds by *Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 30.)

1. Standard of review

“[W]hether a contract is illegal or contrary to public policy is a question of law to be determined from the circumstances of each particular case. [Citation.]” (*Kallen v. Delug* (1984) 157 Cal.App.3d 940, 951; see also *Bovard v. American Horse Enterprises, Inc.* (1988) 201 Cal.App.3d 832, 838.)

2. Whether the Agreement is void as contrary to section 80303

Section 80303 provides: “(a) Whenever a credential holder, working in a position requiring a credential: [¶] . . . .[¶] . . . resigns . . . [¶] . . . [¶] . . . as a result of an allegation of misconduct or while an allegation of misconduct is pending, the superintendent of the employing school district shall report the change in employment status to the Commission not later than 30 days after the employment action. [¶] (b) The report shall contain all known information about each alleged act of misconduct. [¶] (c) *The report shall be made to the Commission regardless of any proposed or actual agreement, settlement, or stipulation not to make such a report*. The report shall also be

made if allegations served on the holder are withdrawn in consideration of the holder's resignation, retirement or other failure to contest the truth of the allegations. . . ." (Italics added.)

Although section 80303 expressly provides that all resignations resulting from allegations of misconduct must be reported to the CCTC regardless of any settlement, the Agreement provides: "[Defendant] shall see that said Accusation shall be discarded and placed in a sealed envelope never to be opened by anyone except *under order of court or mutual agreement of the parties*."

A similar settlement was reached in *Picton v. Anderson Union High School Dist.* (1996) 50 Cal.App.4th 726, 731 (*Picton*). In *Picton*, the plaintiff was employed by the defendant as a high school teacher. (*Id*. at p. 730.) When four students accused the plaintiff of misconduct, including one rape accusation, the defendant charged the plaintiff with "immoral, unprofessional and dishonest conduct rendering him unfit to serve as a certificated teacher." (*Ibid*.) The plaintiff and the defendant entered into a settlement that provided, in relevant part, that the plaintiff would resign and the defendant would seal the plaintiff's personnel file except pursuant to a court order or the plaintiff's consent. (*Id*. at p. 731.) Once the plaintiff had resigned, the defendant sent the CCTC documents detailing and supporting the allegations made against the plaintiff. (*Id*. at p. 732.) The plaintiff filed a complaint against the defendant alleging breach of contract. (*Id*. at p. 729.)

The court in *Picton* turned to California Code of Regulations, title 5, former section 80311,[3] which provided, in relevant part: "'(a) Whenever any person holding a position for which certification qualifications are required by law, . . . resigns, . . . as a result of allegations of his or her commission of acts or omissions which appear to constitute probable cause for the revocation or suspension of any credential issued by or held under the jurisdiction of the Commission on Teacher Credentialing, the employer of such certificated person shall within 30 days notify the Commission of such . . . resignation, . . . and shall provide to the Committee of Credentials facts which constitute the cause or causes for the disciplinary action against the certificated employee by the reporting employer. Such report shall be made to the Committee of Credentials irrespective of any agreement or stipulation providing for withdrawal of allegations previously served upon the certified employee in consideration of his or her resignation as a result of the filing of such allegations or other failure to contest the truth of the allegations.'" (*Picton*, *supra*, 50 Cal.App.4th at pp. 734-735.)

Because the plaintiff in *Picton* had resigned as a result of allegations of his commission of acts or omissions that appeared to constitute probable cause for the revocation or suspension of his credential, the court concluded the defendant was under a legal duty to notify the CCTC of the plaintiff's resignation and to provide it with all of the facts underlying those allegations. (*Picton*, *supra*, 50 Cal.App.4th at pp. 734-735.)

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[3] California Code of Regulations, title 5, former section 80311 (Register 82, No. 45), which was repealed in August 1997 and replaced with section 80303 (Register 97, No. 32), will be hereinafter referred to as former section 80311.

Thus, to the extent the settlement agreement could be "construed as foreclosing the transmission of such facts," it was illegal as a matter of public policy and could not be enforced. (*Id*. at p. 734.)

Just as former section 80311 required the defendant in *Picton* to report the resignation and its underlying facts, section 80303 required defendant in this case to report plaintiff's resignation and its underlying facts. Plaintiff resigned because of 14 different allegations that he had violated the Education Code. As stated above, section 80303 requires defendant to report any resignation resulting from allegations of misconduct, as well as all known information about each alleged act of misconduct to the CCTC. The provision of the Agreement that the Accusation will not be released to anyone without the permission of both parties or a court order directly contradicts section 80303, subdivision (c), which provides that the Accusation must be filed with the CCTC. Thus, the Agreement is void as contrary to an express provision of law. (Civ. Code, § 1667; See also *Vick v. Patterson* (1958) 158 Cal.App.2d 414, 417.)

Defendant attempts to distinguish *Picton*, arguing that, whereas, the plaintiff's behavior in *Picton* clearly constituted misconduct that triggered the reporting requirement, plaintiff's behavior may not have been severe enough to constitute misconduct. Defendant argues that, because neither section 80303 nor any case law explains what type of misconduct triggers the reporting requirement, we do not have enough information to establish that plaintiff actually committed any sort of misconduct. Like defendant, we have been unable to find a definition for misconduct in either section 80303 or case law discussing section 80303. However, unlike defendant, we do not

believe these facts prevent us from concluding that defendant engaged in misconduct within the meaning of the regulation.

"""'When interpreting a statute, we must ascertain legislative intent so as to effectuate the purpose of a particular law. Of course our first step in determining that intent is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning. [Citation.] When the words are clear and unambiguous, there is no need for statutory construction or to resort to other indicia of legislative intent, such as legislative history.'"' [Citation.]" (*Estate of Miramontes-Najera* (2004) 118 Cal.App.4th 750, 758; see also *Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 399 ["'Generally, the same rules of construction and interpretation apply to statutes governing the interpretation of rules and regulations of administrative agencies.'"].)

Black's Law Dictionary (6th ed. 1990) (Black's) defines "misconduct" as "A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness. . . ." (*Id*. at p. 999, col. 1.) Among the 14 allegations made against defendant were his failure to use class time efficiently and his outright refusal to obey the directives issued by the school principal. As a teacher's duties inevitably include efficiently teaching his students and obeying the directives issued by the school principal, we conclude that these allegations indicated a "dereliction from duty." (Black's, *supra*, at p. 999, col. 1.) Next, defendant's use of the

school's e-mail system was improper.[4] Although defendant was permitted to use the system only "'responsibly and primarily for work-related purposes,'" and was prohibited from posting "'harmful or inappropriate matter that is threatening, obscene, disruptive or sexually explicit,'" he sent one e-mail describing a female student's breasts and several e-mails disparaging and cursing other staff members. We cannot identify any circumstances under which such behavior would not be considered improper. As defendant's actions were both derelictions of his duties and exceedingly improper, we conclude that they did constitute misconduct.

Although the plain meaning of the regulation requires a finding that defendant's behavior constituted misconduct, we will also consider whether the history of the regulation invites a more broad interpretation of term. (*Estate of Miramontes-Najera*, *supra*, 118 Cal.App.4th at pp. 758-759.) In August 1997, the CCTC repealed former section 80311, which required employers to report resignations only when the teacher's behavior was so severe that it constituted "'probable cause for the revocation or suspension of [his] credential. . . .'" (See *Picton*, *supra*, 50 Cal.App.4th at p. 734.) Former section 80311 was replaced by section 80303, which requires employers to report any resignation resulting from any allegation of misconduct. Thus, the CCTC was clearly attempting to broaden the situations in which an employer was required to report a resignation, rather than narrow them.

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[4] The defendant specifically used the words "inappropriate" and "improper" to describe defendant's behavior.

Finally, we consider the policy of adopting a more narrow interpretation of the regulation. Section 80303 was undoubtedly promulgated to prevent harm; it was promulgated to prevent more individuals from being raped, assaulted, and improperly educated. If we were to require a more heightened degree of impropriety to constitute misconduct—a rape instead of a suggestive e-mail, an assault instead of threatening behavior, a class of failing students instead of a report that a teacher was inefficient—we would be inviting the very harm that the regulation was intended to prevent. Thus, we reject defendant's contention that there is insufficient evidence to prove that plaintiff's actions constituted misconduct.

3. Whether the nondisclosure provision is severable

Plaintiff contends that if the nondisclosure provision was void, the entire contract was void. However, in *Picton*, the settlement contained a severability clause, and the court concluded that only the contested portion of the settlement was unenforceable. (*Picton*, *supra*, 50 Cal.App.4th at pp. 730, 732.) The Agreement in this case also contained severability clause. Following *Picton*, we conclude that while the contested portion of the Agreement is void and unenforceable, the rest of the Agreement is valid and enforceable.

Plaintiff's complaint requested declaratory relief regarding the validity of the Agreement, as well as his rights under the Agreement. As the Agreement has been found void as contrary to public policy, the issue is now moot. (See *Gabaldon v. United Farm Workers Organizing Committee* (1973) 35 Cal.App.3d 757, 762 [holding that the

expiration of a contract rendered declaratory relief under the contract moot].) We conclude the grant of summary judgment in favor of defendant was proper.

IV. DISPOSITION

Judgment is affirmed. Costs are awarded to defendant.

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HOLLENHORST
Acting P. J.

We concur:

MCKINSTER
J.

MILLER
J.