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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

JOHN H. MILLER, Plaintiff and Appellant, v. UNIVERSITY OF SOUTHERN CALIFORNIA et al., Defendants and Respondents.	B162952 (Los Angeles County Super. Ct. No. BC248821)

APPEAL from a judgment of the Superior Court of Los Angeles County, Madeleine I. Flier, Judge. Affirmed. Motions for sanctions denied.

E. Lyn Lemaire for Plaintiff and Appellant.

Paul, Hastings, Janofsky & Walker, J. Al Latham, Jr., and Christina L. McEnerney, for Defendant and Respondent University of Southern California.

Ballard Rosenberg Golper & Savitt, Wendy Moss, Adrian J. Guidotti and Christine T. Hoeffner, for Defendants and Respondents Childrens Hospital Los Angeles and Marvin Nelson.

Dr. John H. Miller appeals the judgment entered in favor of the University of Southern California (USC), Childrens Hospital Los Angeles (CHLA) and Dr. Marvin Nelson after the trial court sustained without leave to amend the demurrers of USC, CHLA and Nelson to several of Miller's causes of action challenging the decision of a USC faculty panel to revoke his tenure and terminate his employment and dismissed, on summary judgment, Miller's remaining claims. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Miller's Relationship with USC and CHLA*

Miller, a pediatric radiologist, was a tenured professor at USC from 1983 until 2002. During much of that period, Miller worked full time at CHLA, treating patients, conducting research and teaching pediatric radiology to residents. In 1996 Miller's staff privileges at CHLA became dependent on his participation through a physician services agreement with the University Children's Medical Group (UCMG), a USC faculty practice plan and tax-exempt California corporation, which contracted with CHLA to provide physician services to CHLA patients.[1] Nelson, a USC professor and head of both UCMG's Division of Radiology and CHLA's Department of Radiology, was Miller's supervisor at CHLA and was responsible for overseeing the clinical activities of UCMG physicians.

2. *Miller Resigns from UCMG*

Nelson instituted a hospital policy requiring written authorization from a patient's physician before a particular radiological scan (a SPECT imaging scan) could be performed on the ground that prior written authorization was necessary both to ensure and to substantiate compliance with legal proscriptions against "self-referrals" (see Bus. & Prof. Code, § 650). Miller disagreed with the policy, believing the new requirement for written authorization imposed an unnecessary burden that could interfere with patient care. After Miller ordered a scan without obtaining prior written approval from the

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[1] UCMG is not a party to this action.

patient's physician on two occasions, he was reprimanded by Nelson, who warned him that continued defiance of hospital policy would result in his "termination." In December 2000 Miller, without consulting with anyone at CHLA or USC, resigned from UCMG, advising Nelson and USC that he intended to concentrate on his research and his duties as a tenured professor at USC.

3. *CHLA Changes the Lock on Miller's Office*

Following Miller's resignation from UCMG, CHLA, which did not provide office space to physicians without staff privileges, changed the lock on Miller's office. CHLA invited Miller to schedule a time to retrieve his personal property and to inspect and copy any patient information necessary for his ongoing research and advised him it would pack up the materials if he did not contact the hospital within one week. Approximately two weeks later, having not heard from Miller, Thomas Armitage, senior vice-president and general counsel of CHLA, instructed Nelson to move hospital records from Miller's office to a secure location in the nuclear medicine room.

4. *Miller Refuses to Accept USC's Alternative Teaching and Clinical Assignment*

Miller's contract with USC provided that the funding for Miller's position was "external" (that is, funded from non-USC sources, such as research grants or clinical assignments at hospitals) and that his continuing compensation was "contingent upon the availability of such funds from external funding source(s)."[2] According to USC, when Miller resigned from UCMG, he eliminated the existing funding source for his university salary. USC thereafter assigned Miller to a teaching position with the department of radiology at Los Angeles County Hospital & USC Medical Center (LAC&USC), the only location at which a funded position in radiology was available.[3] The new position

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[2] In 2000 Miller received an annual salary from USC of $160,000, as well as approximately $50,000 in additional compensation from UCMG for treating CHLA patients.

[3] The salary for the position at LAC&USC was $132,000, which was the top level of pay under the Los Angeles County physician salary schedule.

involved teaching and supervising residents and interpreting plain films. Miller refused to report for work at LAC&USC, contending the assignment was both "inappropriate" because it involved a practice in adult radiology that was not his area of expertise and insulting to his level of experience. Miller also refused USC's concomitant offer to provide him with additional training in adult radiology. Although he was aware of the grievance procedures outlined in the USC faculty handbook,[4] Miller did not file a grievance.

5. *USC Accuses Miller of Serious Neglect of Duty, a Ground for Dismissal under the Faculty Handbook; a Hearing Is Conducted and a Faculty Tenure Appeals Committee Recommends Dismissal*

When Miller failed to report to LAC&USC for more than six months and failed to file any grievance, USC formally charged him with "serious neglect of duty," a ground for dismissal as provided in the USC faculty handbook. Pursuant to the procedures described in the faculty handbook, a three-member faculty tenure and privileges appeals committee convened to hear evidence concerning the accusation against Miller and to make a recommendation to the university president.[5] Miller was notified of the charges

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[4] The faculty handbook provides that a "grievance may be filed for a violation of rights provided by law, or by established University policies including those contained in the Faculty Handbook, or by the faculty member's contract."

[5] The faculty handbook provides an elaborate five-step process relating to dismissal, each of which was followed in this case: (1) "When a reason arises to question the fitness of a faculty member," the dean investigates the matter and makes a recommendation to the provost. (2) If the provost believes there may be probable cause for a dismissal, "he [or] she shall formulate a preliminary statement of charges with reasonable particularity of the grounds pertinent to the dismissal action under consideration" and forward the charges to the faculty member for comment. (3) "If the Provost is satisfied there is good cause to proceed further, he [or] she shall request a review of the evidence by a three-person select committee appointed by the President of the Faculty from a list of six members of the University Committee on Faculty Tenure and Privileges Appeals nominated by the chair of that committee. The select committee shall review the evidence to determine whether, in its view, sufficient grounds exist to initiate formal dismissal proceedings." (4) "If the Provost determines that formal proceedings for dismissal should commence," the provost shall provide written notice to

and the hearing but did not attend. In March 2002 the faculty panel issued a unanimous decision recommending that Miller be dismissed for serious neglect of his duties. Before USC's president acted on the recommendation Miller resigned, in his words, to preserve his career by avoiding the "academic stigma" that would have invariably attached as a result of being terminated from the university.

6. *Miller Sues USC, CHLA and Nelson; the Trial Court Sustains the Demurrers and Later Dismisses Miller's Remaining Claims on Summary Judgment*

Miller, who was 60 years old at the time he was assigned to LAC&USC, sued USC, CHLA and Nelson seeking damages.[6] Miller alleged that USC, as part of a scheme to rid the university of tenured professors who lacked financially lucrative industry connections, surreptitiously changed its faculty handbook to make it easier to dismiss tenured professors and then, acting in concert with CHLA, "set him up" for dismissal by inciting his resignation from UCMG on which his relationship with CHLA was dependent, demoting him to LAC&USC and charging him with "serious neglect of duty" when he refused to accept the demotion.

In the operative second amended complaint,[7] Miller asserted contract and tort causes of action and claims for alleged violations of Business and Professions Code

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the faculty member of the formal statement of charges and the university's intent to initiate a dismissal hearing. The faculty member shall then "be given the option of resigning in lieu of a dismissal hearing." (5) Finally, if the faculty member contests the charges and does not resign, a hearing shall be held and evidence taken in connection with the charges to determine whether a recommendation should be made to the president concerning dismissal. "[T]he burden of persuading the Hearing Board that adequate cause for dismissal exists rests upon the University, and shall be satisfied only by a clear, persuasive, preponderance of evidence in the record considered as a whole."

[6] At the time Miller filed his complaint, the dismissal hearing had not yet taken place.

[7] The demurrers of CHLA and Nelson to Miller's first amended complaint were sustained with leave to amend.

section 2056,[8] Labor Code section 1102.5[9] and Government Code section 12941 (age discrimination).[10] USC, CHLA and Nelson demurred, requesting the court to take judicial notice of the USC faculty handbook provisions concerning USC's grievance and dismissal procedures as well as CHLA's bylaws.

The trial court sustained demurrers without leave to amend to Miller's claims against USC, CHLA and Nelson for fraud, breach of contract, intentional infliction of emotional distress and retaliation in violation of Labor Code section 1102.5 and Business and Professions Code section 2056, finding that these causes of action were, in substance, challenges to the faculty panel's recommendation to revoke Miller's tenure and terminate his employment and that administrative mandamus (Code Civ. Proc., § 1094.5) provided Miller's "exclusive remedy" to challenge the faculty panel's decision. The court dismissed the remaining causes of action for wrongful termination, intentional

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[8] Business and Professions Code section 2056, subdivision (c), provides: "The application and rendering by any person of a decision to terminate an employment or other contractual relationship with, or otherwise penalize, a physician and surgeon principally for advocating for medically appropriate health care consistent with that degree of learning and skill ordinarily possessed by reputable physicians practicing according to the applicable legal standard of care violates the public policy of this state. No person shall terminate, retaliate against, or otherwise penalize a physician and surgeon for that advocacy, nor shall any person prohibit, restrict, or in any way discourage a physician and surgeon from communicating to a patient information in furtherance of medically appropriate health care."

[9] Labor Code section 1102.5, subdivision (b), provides: "No employer shall retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or violation or noncompliance with a state or federal regulation."

[10] Miller's fourth and eighth causes of action for intentional interference with contract and conversion were asserted only against CHLA and Nelson. His second and ninth causes of action for breach of contract and age discrimination were asserted solely against USC.

interference with contract, conversion and age discrimination on summary judgment, finding that Miller had failed to establish any triable issue of fact.

Miller filed a timely appeal. USC, CHLA and Nelson have moved for sanctions on the ground the appeal is frivolous and includes matters not reasonably material to the appeal's determination.

CONTENTIONS

Miller contends (1) he is entitled to pursue a damage action against USC notwithstanding his failure to have the faculty panel's decision approving his termination set aside by administrative mandamus, and (2) summary judgment was improperly granted because triable issues of fact exist with respect to his statutory and tort claims.

DISCUSSION

1. *The Trial Court Did Not Err in Sustaining the Demurrers of USC, CHLA and Nelson Without Leave to Amend*

    a. *Standard of Review*

In reviewing a judgment following a trial court's order sustaining a demurrer without leave to amend, a reviewing court must give the complaint a reasonable interpretation and treat the demurrer as admitting all material facts properly pleaded; the court does not, however, assume the truth of contentions, deductions or conclusions of law. (*Aubry v. Tri-City Hospital Dist*. (1992) 2 Cal.4th 962, 966-967; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The judgment must be affirmed "'if any one of the several grounds of demurrer is well taken . . . .'" (*Aubry,* at p. 967.) "'[I]t is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory," and "an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." (*Ibid.*) However, if no liability exists as a matter of law and the plaintiff has not demonstrated an ability to amend the complaint to state a cause of action, that part of the judgment sustaining the demurrer must be affirmed. (*Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 44.)

b. *All of Miller's Claims Seeking Damages Related to the Faculty Panel's Recommendation of Dismissal Fail as a Matter of Law Because That Decision, Having Not Been Set Aside in a Mandamus Proceeding, Is Binding in This Action*

The employment-related decisions of a private university, including the decision whether to deny or revoke tenure, following notice and a hearing, is a quasi-judicial determination subject to administrative mandamus review. (*Pomona College v. Superior Court* (1996) 45 Cal.App.4th 1716, 1724-1726 (*Pomona College*); *Gutkin v. University of Southern California* (2002) 101 Cal.App.4th 967, 976-978 (*Gutkin*); *Pollock v. University of Southern California* (2003) 112 Cal.App.4th 1416, 1425 (*Pollock*).) If not set aside in a mandamus proceeding, the university's quasi-judicial decision is final and binding in any later action for damages. (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 69 (*Johnson*); *Westlake Community Hosp. v. Superior Court* (1976) 17 Cal.3d 465, 469, 483 (*Westlake*).) Miller did not challenge in a mandamus proceeding the faculty panel's decision recommending revocation of his tenure. The propriety of the faculty panel's decision thus conclusively established, the trial court properly dismissed all of Miller's claims seeking damages related to the recommendation to revoke his tenure and terminate his employment. (*Johnson,* at p. 69; *Westlake,* at p. 483.)

In arguing that his failure to pursue administrative mandamus does not preclude his damage claims, Miller does not dispute the trial court's assessment that all of the claims dismissed are, in substance, challenges to the faculty panel's recommendation to revoke his tenure. Nor does he attempt to distinguish among USC, CHLA and Nelson, alleging instead that all defendants were part of a conspiracy to terminate his employment at USC. Rather, Miller erroneously asserts his damage claims related to the faculty panel's recommendation to dismiss him may proceed because mandamus is neither an appropriate nor an available remedy to review the faculty panel's decision.

Code of Civil Procedure section 1094.5, subdivision (a), provides for review by administrative mandamus of "any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior

tribunal, corporation, board or officer." Miller contends the "by law" prerequisite for mandamus review is not satisfied in this case because the hearing was required by the faculty handbook and not by statute. This argument has been unequivocally rejected in prior cases. (*Gutkin, supra,* 101 Cal.App.4th at p. 979 ["It is precisely the faculty handbook's requirement of a hearing that renders the hearing 'required by law' for purposes of administrative mandamus."]; *Pomona College, supra,* 45 Cal.App.4th at p. 1727, fn. 10 ["Because the Handbook governed Corin's employment relationship with Pomona, the college was required by law to provide the hearing described therein."].)

Miller also urges that the faculty panel's decision should not be subject to deferential mandamus review because the hearing was a sham, rife with conflicts of interest and due process violations and designed solely to confer legitimacy on USC's "dismissal machine." Those contentions, directed to the fairness of the hearing itself, are properly made in an administrative mandamus action. Indeed, that is "precisely the purpose of mandamus review -- to ferret out such flaws and rectify them." (*Gutkin, supra,* 101 Cal.App.4th at p. 978.) The same can be said for Miller's concern that limiting review to mandamus unfairly permits the malfeasants to police themselves. The decision of a quasi-judicial tribunal may be challenged in numerous ways, including grounds of bias, conflicts of interest (see, e.g., *Haas v. County of San Bernadino* (2002) 27 Cal.4th 1017, 1029-1032), procedural unfairness or abuse of discretion. (Code Civ. Proc., § 1094.5, subd. (b).) Those challenges, however, are properly made, if at all, in a mandamus proceeding.

Finally, Miller asserts that one of the bases for the decision in *Pomona College, supra,* 45 Cal.App.4th at page 1726, for subjecting a university's tenure-related decision to mandamus review -- that tenure involves an inherently subjective evaluation of teaching ability, research and scholarship better left for determination by one's academic peers than by lay juries -- does not apply when that decision relates to the *revocation* of tenure. In the latter instance, he argues, the professor's contribution to the academic community and to the university has already been decided in the professor's favor;

accordingly, the question whether tenure, once granted, has been wrongfully revoked is a non-academic inquiry best resolved by a jury, not the university.

Regardless of the nature of the grievance, the quasi-judicial findings of the university pursuant to its internal hearing process are final and binding absent being set aside in a mandamus proceeding. Whether those findings concern tenure or some other employment-related decision triggering a quasi-judicial review is immaterial; the collateral estoppel effect of that decision precludes recovery of damages in a later civil action. Further, as our colleagues in Divisions Two and Three of this court held in *Gutkin* and *Pollock*, cases nearly identical to the case at bar, the purported distinction between denial of tenure and its revocation for purposes of the applicability of mandamus review is one without any substance: The decision to revoke tenure for serious neglect of duty, like the decision to grant or deny it in the first instance, "requires an assessment of whether the professor's conduct is consistent with or contrary to academic norms, which only academic peers, not lay jurors, are qualified to determine." (*Gutkin, supra,* 101 Cal.App.4th at p. 978 [Division Two]; *Pollock, supra,* 112 Cal.App.4th at p. 1426 [same] [Division Three].)

Because the faculty panel's decision approving Miller's termination, having not been set aside in a mandamus proceeding, is final and binding in this action, each of Miller's causes of action challenging the propriety of that decision was properly dismissed on demurrer without leave to amend. No liability exists as a matter of law with respect to any of those claims, regardless of legal theory.

2. *The Trial Court Did Not Err in Summarily Adjudicating Miller's Claims For Wrongful Termination in Violation of Public Policy, Age Discrimination, Intentional Interference with Contract and Conversion*

We review the trial court's grant of summary judgment de novo and decide independently whether the facts not subject to triable dispute warrant judgment for the moving party as a matter of law. (*Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1348; Code Civ. Proc., § 437c, subd. (c).)

a. *Miller's Wrongful Termination Claims Against Both USC and CHLA Fail Because Miller Failed to Exhaust Available Internal Grievance Procedures*

Miller's claim for wrongful termination against USC rests on allegations that he was demoted to a clinical position at LAC&USC as a prelude to dismissing him and that the demotion itself was so substantial as to amount to a "constructive" termination in violation of public policies prohibiting age discrimination (Gov. Code, § 12941) and retaliation for advocating medically appropriate care (Bus. & Prof. Code, § 2056) and reporting misconduct to a government or law enforcement agency (Lab. Code, § 1102.5). There is serious question whether Miller can actually establish his assignment to LAC&USC constituted a "termination." (See, e.g., *Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1247 (*Turner*) ["a demotion, even when accompanied by reduction in pay, does not by itself trigger a constructive discharge"]; *Gibson v. Aro Corp.* (1995) 32 Cal.App.4th 1628, 1637 ["an employee is not permitted to quit and sue simply because he or she does not like a new job assignment"]; but cf. *Scott v. Pacific Gas & Electric Co.* (1995) 11 Cal.4th 454, 468, fn. 3 [declining to hold that a demotion giving rise to a resignation could never be so drastic or punitive as to constitute a constructive discharge].) In fact, Miller did not resign from USC for more than a year after his reassignment and then only when the academic review committee recommended his dismissal. (See, e.g., *Lee v. Bank of America* (1994) 27 Cal.App.4th 197, 214 ["We may therefore dispense with the idea that a demotion in March 1988 was somehow the 'constructive' equivalent of the discharge that finally occurred in April 1989"].)

Nevertheless, whether Miller could establish his termination, constructive or otherwise, is beside the point. As this court has recently held, exhaustion of an available internal grievance procedure is a jurisdictional prerequisite to bringing a common law *Tameny*[11] claim for wrongful termination in violation of public policy. (*Palmer v. Regents of the University of California* (2003) 107 Cal.App.4th 899, 904 ["When a

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[11] *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167.

private association or public entity establishes an internal grievance mechanism, as the Regents has done, failure to exhaust those internal remedies precludes any subsequent private or civil action."]; see also *Westlake, supra,* 17 Cal.3d at p. 485.) Because Miller never pursued a grievance related to the assignment at LAC&USC and resigned before the university-initiated grievance procedure had concluded, his claim for wrongful termination in violation of public policy is barred.

Miller's wrongful termination cause of action against CHLA, based on allegations that CHLA constructively terminated him when it locked him out of his office, fares no better. Miller's claim suffers from numerous defects, including an absence of evidence that he was employed by CHLA. Indeed, the undisputed evidence shows Miller provided services to CHLA patients by virtue of his professional services agreement with UCMG. Miller himself has asserted throughout these proceedings that he is an independent contractor not subject to CHLA's control. (See, e.g., *Sistare-Meyer v. Young Men's Christian Assn.* (1997) 58 Cal.App.4th 10, 17 [employment relationship is necessary element of wrongful termination claim; independent contractor thus lacks standing to sue for a "termination"]; *Abrahamson v. NME Hospitals, Inc.* (1987) 195 Cal.App.3d 1325, 1328.)

Miller asserts, however, although he provided services to CHLA patients by virtue of his agreement with UCMG, CHLA was his employer in relation to his non-clinical activities, including the teaching of its residents. Evidence that USC received funding from CHLA to provide it with teaching services, the only admissible evidence Miller relies on to support his assertion, hardly raises a triable issue of fact that CHLA was Miller's employer. Nor do allegations that CHLA "conspired" with USC to effect the "lock-out" otherwise salvage his wrongful termination claim against CHLA. (*Weinbaum v. Goldfarb, Whitman & Cohen* (1996) 46 Cal.App.4th 1310, 1315 [non-employers cannot be held liable for wrongful termination based on theory that they conspired with employer].) In any event, there is no evidence that changing the lock on Miller's office

was wrongful. CHLA maintained it did not provide office space to USC physicians who did not have staff privileges, and there is no evidence to the contrary.[12]

b. *Miller's Claim for Age Discrimination in Violation of FEHA Fails as a Matter of Law*[13]

Miller's claim that the assignment to LAC&USC was a demotion rooted in age discrimination in violation of FEHA (Gov. Code, § 12941) is premised entirely on the fact that he was 60 years old at the time and was replaced at CHLA by significantly younger and less qualified radiologists. Assuming *arguendo* that Miller satisfies the minimal prerequisites of a prima facie case (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 354), he provided no admissible evidence[14] that USC's proffered legitimate business reason for assigning him to LAC&USC -- that it was the only position available after Miller resigned from UCMG and terminated his staff privileges at CHLA -- was actually a pretext for age discrimination.[15] In arguing a triable issue of fact exists as to

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[12] To the extent Miller's claim might be interpreted to seek damages for the constructive termination of his contract with UCMG, that claim is properly brought, if at all, against UCMG, which is not a party to this action. To the extent Miller seeks damages based on the termination of his staff privileges at CHLA, the claim is jurisdictionally barred because Miller failed to exhaust CHLA's available internal grievance procedures. (*Westlake, supra,* 17 Cal.3d at pp. 469, 483.)

[13] Miller exhausted his administrative FEHA remedy and received a right to sue letter. Miller was not required to exhaust, in addition his FEHA administrative remedy, USC's internal grievance procedures in order to bring a FEHA claim. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1091-1092.)

[14] A letter evidencing CHLA's offer of an "early retirement package" to Miller following his resignation from UCMG was excluded by the court. Because Miller does not challenge that ruling on appeal, we treat this evidence as properly excluded and do not consider it on appeal. (*Lopez v. Baca* (2002) 98 Cal.App.4th 1008, 1014-1015; *Stockinger v. Feather River Community College* (2003) 111 Cal.App.4th 1014, 1022; *Alexander v. Codemasters Group Limited* (2002) 104 Cal.App.4th 129, 140.)

[15] In fact, in his deposition Miller stated he did not believe his age "was a factor" in his assignment to LAC&USC; later, he submitted, without explanation, an "addition" to that testimony stating he did believe "age was a factor" in how he was treated at USC.

the issue, Miller asserts only that USC's proffered business reason was an effort to obscure its scheme of terminating tenured professors lacking financially lucrative industry connections. Even if it were supported by some evidence, Miller's contention does little to advance his claim. Where an employer's explanation is intended to conceal "'something other than discrimination, the inference of discrimination will be weak or nonexistent'" (*Reeves v. Sanderson Plumbing Products, Inc.* (2000) 530 U.S. 133, 148 [120 S.Ct. 2097, 2109]; see also *Guz*, at p. 361 [employer entitled to summary judgment if "the evidence as a whole is insufficient to permit a rational inference that the employer's actual motive was discriminatory"].)

c. *Miller's Conversion Claim Against CHLA and Nelson Fails as a Matter of Law*

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion are the plaintiff's ownership or right to possession of the property at the time of the conversion; the defendant's conversion by a wrongful act or disposition of property rights; and damages. It is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converter has applied the property to his own use." (*Oakdale Village Group v. Fong* (1996) 43 Cal.App.4th 539, 543-544.)

Miller's conversion claim, asserted against both CHLA and Nelson, rests on allegations that Miller's research was effectively "destroyed" by CHLA and Nelson when it was moved out of his office and its order disrupted. CHLA submitted declarations from Nelson and Armitage that the research materials in Miller's office were placed in boxes in the same order that they were maintained in Miller's office and that Miller was repeatedly invited to inspect the boxes and copy any hospital records necessary to his on-going research. Miller admitted in his deposition that he never inspected the boxes containing the records he now claims were necessary to his research. Miller thus had no evidence any images were destroyed or their order disrupted.

Miller's reliance on *Department of Industrial Relations v. UI Video Stores*, *Inc*. (1997) 55 Cal.App.4th 1084, 1096 is misplaced. That case holds only that one who has a

right to possession without an ownership interest has standing to sue for conversion. CHLA did not dispute that Miller had a right of access to certain information. Rather, summary adjudication was sought and granted on the ground that Miller had no evidence he was denied access to his property or his research has been effectively destroyed. Based on Miller's admissions, the trial court did not err in finding Miller had no evidence to support his conversion claim as a matter of law.

d. Miller's Intentional Interference with Contract Claim Fails as a Matter of Law

The elements of a cause of action for intentional interference with contract are: (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. (*Pacific Gas & Electric Co. v. Bear Sterns & Co.* (1990) 50 Cal.3d 1118, 1126.)

Miller contends triable issues of fact exist as to whether CHLA and Nelson tortiously interfered with Miller's tenure contract with USC. He argues that, by locking him out of his office, CHLA converted his research, thus providing the sufficient "wrongful conduct" necessary to establish an interference claim. Miller is unable to establish the elements necessary for his interference cause of action. First, Miller has no evidence a conversion (the only wrongful conduct alleged on appeal as a basis for the interference claim) took place. Second, there must be a causal relationship between the defendant's wrongful conduct and the third-party's breach of contract. (*Pacific Gas & Electric Co. v. Bear Sterns & Co.*, *supra*, 50 Cal.3d at p. 1126.) Here, there is no evidence whatsoever that CHLA's actions concerning Miller's research in any way affected the faculty panel's recommendation to terminate Miller's employment.

3. *The Motion for Sanctions Is Denied*

USC and CHLA moved for sanctions on the ground Miller's appeal was frivolous. Although we have affirmed the judgment, and have done so on grounds firmly established by other cases, we cannot say, in light of the arguments presented, that the

appeal was "totally and completely devoid of merit." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650-651.) Nor does evidence exist that the appeal was brought for an improper motive to harass USC, CHLA or Nelson or delay the effect of the trial court's decision. (*Ibid.*) Accordingly, the motion for sanctions is denied.

DISPOSITION

The judgment is affirmed. The defendants' motions for sanctions are denied. University of Southern California, Childrens Hospital Los Angeles and Marvin Nelson are to recover their and his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

PERLUSS, P. J.

We concur:

JOHNSON, J.

ZELON, J.