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SC Court of Appeals

Case No. 2023-001733

In
The State of South Carolina
The Court of Appeals

Jian-yun (John) Dong, M.D., Ph.D., Appellant

v.

The Medical University of South Carolina, Respondent

Appeal From Charleston County Court of Common Pleas

The Honorable Jean Toal, District Court Judge

Trial Court Case No. 2016-CP-10-06683

FINAL BRIEF OF THE APPELLANT

John Dong, M.D., Ph.D.

Appellant, *pro se*

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STATEMENT OF ISSUES PRESERVED FOR REVIEW

- I. Did the district court err in granting Defendant's motion for summary judgment when Defendant failed its burden to prove the lack of genuine issues?
- II. Is violation of due process a reversible error, in which the district court restricted the Appellant's discovery to practically nonexistent and granted the summary judgment before Appellant could conduct a discovery?

STATEMENT OF CASE

This appeal arises from the District Court's grant of Summary Judgment in favor of the Medical University of South Carolina (MUSC, Respondent) in a civil action filed by Jianyun (John) Dong, M.D., Ph.D. (Appellant). Dr. Dong claimed that MUSC breached a contract in bad faith, unlawfully seized his research assets, terminated his tenured professorship and employment benefits, and caused irreparable harm to his career and financial well-being.

The case was initially filed in 2014 and was reinstated in 2016 with Case Number 2016-CP-10-06683. (Rp 96) The discovery phase was problematic, fraught with long delays caused by the Respondent's stonewalling tactics, refusals of the Appellant's requests to produce documents and take depositions, as well as court's

Stays during the pandemic. At the request of MUSC, the District Court further limited discovery to a narrow set of email communications “directly to or from Dr. Dong and Dr. Lanier no earlier than 2010”. With such limitation, MUSC produced a stack of repeated the same chains of email communications that were not in precise order and without page numbers and dates, making them nearly impossible to read or verify their authenticity. At the same time, the District Court set a short and firm timeline for the “dispositive motion” phase and denied Dr. Dong’s motions to compel, to expand the scope of the discovery, and for a protection order due to his illness and surgeries, and motions for reconsideration. As a result, the District Court granted the Respondent’s Motion for Summary Judgment without allowing Dr. Dong to conduct a meaningful discovery to obtain relevant documents and take any witnesses’ deposition.

Additionally, the District Court did not allow the parties to conduct a mediation – a mandatory requirement set by the Supreme Court on November 12, 2015, and became effective on January 1, 2016.

Following the issuance of the Order granting summary judgment on July 17, 2023, Dr. Dong filed a Motion to Alter or Amend the Order on July 28. (Rp 467) The Respondent submitted a Response on August 16. (Rp 335) The District Court denied the Motion on September 22 as “untimely” (which is erroneous based on the filing dates) and meritless for “fail[ing] the burden of proof.” (Rp 4) On September

28, Dr. Dong filed a Motion for Recusal based on the appearance of bias, (Rp 108) which the district court denied on October 4. (Rp 2) Dr. Dong filed his Notice of Appeal on November 27, 2023. (Rp 102)

STATEMENT OF FACTS

A. THE BACKGROUND

Appellant John Dong, M.D, Ph.D., was a tenured full professor at the Medical University of South Carolina. Dr. Dong was recruited by MUSC from The University of California, San Francisco, in 1998. As part of his recruitment, Dr. Dong was requested to contribute to MUSC's efforts in establishing biotechnology industries under the mandate of the State of South Carolina to support high-paid jobs.

In about 2008, Dr. Dong found out that the Department Chairman, Dr. James Norris, had been covertly converting Dr. Dong's research projects, funds, and laboratory equipment for Dr. Norris' use while holding Dr. Dong's promotion and salary to coerce Dr. Dong not to raise the issues to the MUSC administration. However, Dr. Norris made false claims against Dr. Dong to the MUSC administration and various committees, claiming biosafety violations because Dr. Dong developed vaccines against lethal infectious agents for the National Institute of AIDS and Infectious Diseases and the Department of Defense. (Generally, see Dr. Dong's deposition, Rp 1210 -1248)

In or about 2009, with the help of Dr. Norris' friend, the Vice President of Research, Stephen Lanier, Dr. Norris blatantly took over all of Dr. Dong's biological research materials under the falsehood of "biosafety auditing." He eventually took all of Dr. Dong's research materials, technologies, equipment, and documentation by locking up his laboratories and office. This completely blocked Dr. Dong's ability to teach, research, and advance his academic career.

Dr. Dong complained to the Administration of MUSC to resolve the illegal takeover and violations of Dr. Dong's faculty rights. However, Dr. Lanier was the vice president of research and was in charge of academic affairs related to research and teaching. He was the very person who conspired with James Norris to take over Dr. Dong's research operations. After nearly a year of struggling with Lanier's stonewalling, Dr. Dong could not get back his research materials and was continuously blocked from his research and teaching operations. Time was critical in his research, competing for grant funding, and advancing his career. (See Dr. Dong's deposition, Rp 1215-1223)

B. THE AGREEMENT

Finally, in April 2010, Dr. Lanier proposed "a temperate solution" through Dr. Jerry G. Reves, the Dean of the Medical College and Vice President for Medical Affairs. Dr. Reves suggested implementing an eighteen-month "cooling period" during which Dr. Dong's research operations would be separated from Dr. Norris's.

This would allow Dr. Dong to continue his research off campus at a company established by MUSC's Foundation for Research and Development, while also maintaining his other academic activities at MUSC under the oversight of Dr. Yusuf Hannun, the Chairman of the Department of Biochemistry. Dr. Reves noted that after the "separation," MUSC would evaluate Dr. Dong's performance and allow him to return to campus, particularly if he secures more grants for MUSC. Alternatively, if Dr. Dong accepts a position at another university, he would resign from MUSC. These stipulations were outlined in the detailed terms of the Agreement. (Rp 1006-1010)

Two of the essential components of the Agreement are:

(1) Retention of his tenure professorship and full access to MUSC facilities on campus to conduct his academic activities as a tenured full professor. (Rp1007 - 1008)

(2) Returning all Dr. Dong's research materials and equipment, which are his properties, to Dr. Dong and transferring these assets to a laboratory at the company established by the Foundation for Research of MUSC; A partial list of Dr. Dong's assets was attached with the Agreement. (Rp 1008-1014) (MUSC violated both of these essential terms)

The Agreement was drafted by MUSC's general counsel, Mr. Joe Good. After several revisions, Dr. Dong was informed to sign the "final version of the agreement,"

with all the changes and terms that had been discussed, on May 3, 2010. Out of deep respect and trust for Dr. Reves, Dr. Dong did not scrutinize the “legal wording or style” utilized by Mr. Good, which was explained to him as “saying the same thing” in legal jargon. Dr. Dong was not represented by an attorney and signed the “Final Separation Agreement” as he was explained to and understood: “the final version of the temperate separation agreement” for the cooling period.¹

C. THE BREACH OF CONTRACT

As the vice president for research, Dr. Lanier was in charge of implementing the Agreement. However, during the eighteen months following the signing of the Agreement, Dr. Lanier did not transfer any of Dr. Dong’s research assets to the off-campus location but continuously blocked Dr. Dong’s academic activity at MUSC – the two essential conditions of the Agreement. (Rp 1006-1008) Dr. Lanier further supported Dr. James Norris and other faculties to take over Dr. Dong’s research

¹. This notion is important because, at the motion for summary judgment hearing, the defendant’s attorney claimed that the Agreement was actually a “final severance agreement” without any witness testimony or affidavit. The defendant’s attorney led the court to believe Dr. Dong agreed to resign from the University without material condition. First, this claim proved that MUSC was in bad faith and had no intention to honor the Agreement. Second, the claim is false because MUSC’s General Counsel clearly understood the differences in the legal definitions of “separation” and “severance.” Here, separation meant separating the two disputing faculty members by transferring Dr. Dong’s operation to an off-campus location in order for him to continue his research work on behalf of the University, with the terms detailed in the Agreement. At the end of the separation period, the resignation was conditioned upon Dr. Dong choosing to obtain a professorship at a different university. (Rp 1007)

projects and to continue the use of Dr. Dong's research funds, materials, and technologies to obtain research grants, publish research results, and enrich Dr. Norris, Dr. Lanier, and MUSC at the expense of devastating Dr. Dong's career and livelihood. (Rp 1215-1216; Dong deposition p 21-23)

In contrast, Dr. Lanier implemented numerous activities detrimental to Dr. Dong's career. These included but were not limited to:

- (1) Did not transfer or return Dr. Dong's research materials, essential documents, and equipment, which are essential for Dr. Dong to continue his research and advance his career;
- (2) Withheld Dr. Dong's multiple intellectual properties;
- (3) Continually blocked from any academic activities at MUSC;
- (4) Rejected a \$3,500,000 Dengue vaccine grant that Dr. Dong obtained from the National Institutes of Health on behalf of MUSC, causing Dr. Dong to lose his salary and funds for research provided in the grant.
- (5) Terminated his tenure at the University;
- (6) Terminated his salary and benefits, including his and his family's health benefits;
- (7) Terminated his retirement pensions;
- (8) Assisted and participated in a hostile takeover by one of the Company's investors who laid all the legal liability of the Company's using federal contract funds for a research facility on Dr. Dong and made him suffer all the legal consequences for the Company while the investors cashed out and abandoned the Company.

This breach of contract destroyed Dr. Dong's stellar career and entire financial well-being, and the damages were irreparable.

D. THE CASE HISTORY

Dr. Dong filed his Complaint on September 2, 2014, in the Court of Common Pleas in Charleston County (district court), alleging breach of contract, bad faith dealing, and illegally seizing Dr. Dong's research material, equipment, technologies, protocols, and records, abolishing Dr. Dong's tenure, and violated Dr. Dong's faculty rights and caused severe damage to Dr. Dong's career and livelihood. (Rp 1001-1018)

The Case was suspended when MUSC's general counsel, Mr. Joe Good, resigned, and Dr. Dong's attorney, Mr. Allan Homes (Dr. Dong's attorney), applied for the position. The district court reinstated the Case in 2016 at Dr. Dong's request after MUSC hired a new General Counsel.

E. THE COURT PROCEEDINGS

Subsequently, MUSC proceeded with discovery, including its First Interrogatory and Request for Production, in late 2018. Dr. Dong submitted a timely Response to MUSC's satisfaction (Rp 956) and filed his First Request for Production. (Rp 947) However, MUSC refused to produce any information or document requested in Dr. Dong's Request for Information by answering each question as "too broad and ambiguous." (Rp 932-946) Dr. Dong filed an Objection. (Rp 927-931) In March 2019, Dr. Dong filed the First Motion to Compel. (Rp 924-926) The Motion to Compel was subsequently heard by the Honorable D. Craig Brown. As a

result of the hearing, Judge Brown issued an Order on June 20, 2019, GRANTING the First Motion to Compel. (Rp 83-86)

On July 3, 2019, MUSC filed a Motion to Alter or Amend as to Judge Brown's June 20, 2019, Order. (Rp 916-922) Dr. Dong filed a Response in Opposition. (Rp 909-915) Thereafter, Judge Brown held a hearing where MUSC did not present a legal basis but claimed logistic or practical reasons for MUSC's inability to provide the requested information. However, MUSC claimed that it was ready to produce the information if the First Request for Information is limited to communications "directly to or from Dr. Dong and Dr. Lanier no earlier than 2010." At the hearing, MUSC also told Judge Brown that the information was "extensive, about 500 pages," and could be produced immediately. Judge Brown agreed and issued an Order on October 4, 2019, requesting MUSC to produce the limited information within ten days, and specifically ordered that the time and scope of the discovery "may be expanded at any time by either party." (Rp 84-85, a. - b.)

Under Judge Brown's order, MUSC provided a stack of printed emails, most of which were repeats of the same email chains without page numbers or dates and were not in clear order. This email dump did not conform with discovery rules that require the responding party "shall produce them as they are kept in the usual course business or shall organize and label them to correspond with the categories in the

request.” See SCRCP, Rule 34(b). Evaluating the content or authenticity of the printed materials was nearly impossible.

Per Judge Brown’s Order, Dr. Dong filed a Motion to Expand Discovery in time and scope on January 29, 2020 (Rp 904-908)) and served MUSC with the Second Request for Production. (Rp 892-903) Again, MUSC refused to produce any information by claiming each question was “too broad and ambiguous” or “the requests were the same as the First Request for Production,” which were never answered.

In February or March 2020, Judge Brown Stayed the forgoing Case because of the ongoing COVID-19 pandemic, and the South Carolina Supreme Court issued an initial memorandum to close or alter the operations of certain circuit courts in South Carolina.

After the courts returned to normal operation, Dr. Dong filed the Second Motion to Expand the Time and Scope of Discovery on January 11, 2021. (Rp 877-878) The motion was met with no response. Finally, on January 20, 2021, Dr. Dong filed the Second Motion to Compel Production. (Rp881-884)

MUSC failed to respond to Dr Dong’s Motions for nine months, which legally left these Motions unopposed.

Dr. Dong filed a Motion for Granting Un-contested Motions on September 22, 2021.

Subsequently, MUSC filed a Motion for a Status Hearing, blaming its nonresponse to Dr. Dong's Motions to Expand Discovery on a "clerical error" of the court, which made the appearance that the Case remained "stayed."

On October 5, 2021, at the request of MUSC, the district court lifted the stay and allowed MUSC to file a Response to Dr. Dong's Motions to Expand Discovery and Second Motion to Compel. (Rp80). MUSC filed the Response to the Plaintiff's Motion to Compel and All Other Pending Motions. (Rp 819-876) Dr. Dong filed a Reply. (Rp 811-817)

On December 13, 2021, the district court commissioned Magistrate Judge Cothran to conduct a hearing on Dr. Dong's pending motions. At the hearing, Magistrate Cothran indicated that Dr. Dong's Motions to Expand Time is "granted" but suggested that Dr. Dong continue the discovery by taking depositions and "may request additional documents based on the information obtained through the deposition."

However, on January 10, 2022, Magistrate Cothran's clerk emailed MUSC's counsel, "Judge Cothran DENIED all Plaintiff's discovery motions and requested the counsel to submit a proposed order."

On January 20, 2022, MUSC submitted the "proposed order." The "order" denies Dr. Dong's Motion to Compel the Second Request for Production because "the requests are the very same requests contained in Plaintiff's First Request,"

although these requests were never answered in Defendant's First Response. The "order" further Denys Dr. Dong's request for expanding the scope of the discovery because "Dr. Dong did not obtain leave of the court to request the materials;" "How if Dr. Dong's Second Request for Production can be viewed as impliedly requesting the court's permission, the court denies Dr. Dong's request." (Rp 77). These "reasons" were untrue and meritless. Dr. Dong filed a Motion to Expand Discovery (Rp 904-908) and a Motion to Amend Discovery Restrictions and Schedule. (Rp 877-880). The initial limit was ordered specifically applying to the First Request for Production at MUSC's request in order for it to timely file some limited answers. The proposed order led the court to permanently limit Dr. Dong's discovery to a narrow set of emails (Dr. Dong received from Dr. Lanier in 2010 and allowed MUSC to dictate the timeline), which is a violation of the discovery rules.

On February 3, 2022, Dr. Dong filed his "Opposition to the proposed order." (Rp 805-810)

On February 7, 2022, Magistrate Cothran signed the MUSC-proposed order word by word over Dr. Dong's objections – permanently limited Dr. Dong's discovery to a hard copy of repeated email chains that were not in a particular order, no page numbers and cannot be verified. (Rp 76-77)

Dr. Dong filed an Interlocutor Appeal of Magistrate's Order to Restrict Discovery based on the district court's limited appellate authority over Magistrate's

decision or Motion to Reconsideration to the district court. (Rp 793-804). The district court denied the Interlocutory Appeal as it has no appellate authority and did not consider it as a Motion for Reconsideration. (Courts should consider pro se filings liberally with a lower standard than those filed by an attorney.)

Dr. Dong timely filed an interlocutory appeal based on that the unreasonable restriction on discovery violated due process, and the harm to Dr. Dong would be irreparable after a trial, pursuing Federal Civil Procedures §1292. (Rp 774)

This Court remitted the appeal to the district court because the judgment was not final. (Rp 54)

The Case was reassigned to the retired Justice, Honorable Jean Toal, as the district judge.

On October 4, 2022, Judge Toal held a status conference. (Rp 62) At the hearing, the Judge accepted a schedule proposed by the Respondent's attorney over Dr. Dong's objection and asked the attorney to submit a proposed order. On October 7, the Judge issued the Scheduling Order, which set a short timeline for the discovery before filing dispositive motions. (Rp 56-58) The Order did not allow any time for mediation or order a mediation even though "the case is subject to mediation." The Order set a firm time for taking Dr. Dong's deposition. (Rp 57) In contrast, there was not any firm requirement for MUSC to provide his witness; Dr. Dong could only take the deposition of MUSC's employees when they were willing and available –

MUSC's tactic built into the proposed scheduling order to obstruct Dr. Dong from conducting the deposition.

With the Order's short and strict timeline for Dr. Dong's discovery, the Respondent implemented its obstructive tactics, using a variety of trivial or logistic reasons to delay and hamper Dr. Dong's discovery. This ultimately resulted in Dr. Dong not being able to take any deposition before the Dispositive Motion phase. For example, the Respondent's attorney stopped his deposition of Dr. Dong when Dr. Dong asked if he could record the deposition with his iPhone for personal use while the deposition was recorded and transcribed by the court reporter.² Respondent's attorney disagreed but could not cite a specific rule preventing Dr. Dong from doing so. Even when Dr. Dong agreed not to use his iPhone, the Respondent's attorney insisted on postponing the deposition "to seek the court's intervention." It took weeks off the short time before the Judge responded. When it was Dr. Dong to take depositions of his witnesses, the Respondent's attorney delayed the process for weeks each time because he "needed to coordinate with MUSC's general counsel and the witnesses to find out when they are "willing and available." Finally, the attorney refused to produce any of the key witnesses by claiming MUSC lost contact with them after their retirement, even though they were all receiving pensions and

². The rules for deposition state the recording and transcription must be done by a certified court reporter for courtroom use. However, there is no language prohibiting the use of iPhone recordings by the person being deposed for his reference.

benefits from MUSC. Further, Respondent's attorneys filed Motion for Protective Orders for their consecutive vacations, and the court granted all these motions, taking extensive time out of the short time for Dr. Dong to conduct depositions. (Rp 70)

In contrast, the court held firm the deadlines over Dr. Dong's interests in taking deposition of his witnesses. The district court denied all of Dr. Dong's motions for a protective order, including for a protection order, because a proceeding in a superior court (Rp 759), Motion for Extension of Time for Discovery due to documented lung infection on top of his diabetes and hypertension (Rp 750), a Motion for Reconsideration based on Good Cause Standard (Rp 49), a second Motion for a Protective Order based eye surgeries. (Rp 497-515) The court denied Dr. Dong's Motions not based on the "good cause standard" or the right for discovery as required by the law but instead based on "because the motions conflict with the Scheduling Order." In contrast, the court granted all Respondent's motions for protective orders because the two Respondent's attorneys wanted to take consecutive vacations, even though only one attorney would be needed for the deposition. These protective orders took up the remainder of the time for Dr. Dong to take the deposition and prepare for the dispositive motion phase.

On March 31, 2023, the very day the depository motion may be submitted, the Respondent submitted its Motion for Summary Judgment. The court gave Dr.

Dong 10 days to submit his response before the hearing, which was the minimal amount of time required by statute. Dr. Dong filed a motion for an extension to file a response to the defendant's motion for summary judgment because Dr. Dong is a layman representing himself and needs extra time to study and prepare for the response. (Rp 602) The court denied the motion by email without stating a reason.

On April 4, Dr. Dong had to file a hastily prepared Response in Opposition to the Defendant's Motion for Summary Judgment (Rp 517-520) but was not able to submit a Memorandum in Support of the Opposition to the Motion for Summary Judgment, which was submitted June 25. (Rp 521-601)

On May 1, Dr. Dong submitted a Motion for a Protective Order due to scheduled eye surgeries and recovery time. The motion was supported by medical records showing that the scheduling and pre-surgery examinations and tests predated the Hearing Notice for Summary Judgment. (Rp 498) The Judge denied the Motion with an email stating, "It is not the right way to request an extension of time."

On May 26, Dr. Dong filed a motion for continuance of the hearing on Summary Judgment because, in addition to the eye surgeries, Dr. Dong would need more time to prepare for the hearing under this Court and the Supreme Court's rulings that "pro se litigant" should be given "leeway" in filing and review standard (citation omitted). (Rp 492-497) The court again denied the motion by email without stating a reason.

On June 15, Dr. Dong filed a Motion for Equal Time Court Filings, requesting the court at least give Dr. Dong the time equal to those given to the attorneys. In the Motion, Dr. Dong raised the issue that the court not only gave Dr. Dong the minimal time required by the statute but also did not allow Dr. Dong access to the ECF system so that Dr. Dong had to submit his filing by mail (The court also did not permit the extra days for mailing). This, in fact, gave Dr. Dong significantly less time than that given to the Respondent's attorneys. On June 20, the court **"granted"** Dr. Dong's Motion by **reaffirming the hearing date on June 26, which was one day after the requested protection time due to eye surgeries, leaving no time for Dr. Dong to prepare for the hearing after the surgeries.** (Rp 29) In fact, the district court DENIED Dr. Dong's well-funded Motion by titling the Order with "GRANTED."

Dr. Dong did not have time to submit the Memorandum in Support of his Opposition to the Motion for Summary Judgment or to prepare for the hearing. On June 27, Dr. Dong filed a Motion for Rehearing and the Memorandum in Support of his Opposition. (Rp 486) On July 7, 2023, the Judge denied the Motion (Rp 26) and issued the Order Granting Motion for Summary Judgment. (Rp 10-24)

On July 28, 2023, Dr. Dong filed a Motion for Amendment of the Order Granting Summary Judgment. (Rp 467-485) Respondent filed a Response. (Rp 335-466) The Judge denied the Motion on September 22, 2023, before Dr. Dong could file his Reply to Respondent's Opposition. (Rp 4-9 and Rp 322-334)

On September 28, 2023, Dr. Dong filed a motion for recusal based on the appearance of bias. (Rp 108) The Judge denied the Motion on October 4, 2023. (Rp 2-3)

On November 27, Dr. Dong filed the Notice of Appeal to the Order Granting Defendant's Motion for Summary Judgment. (Rp 102)

ARGUMENT

I. The district court erred in granting Defendant's motion for Summary Judgment when Defendant failed its burden to prove the lack of genuine issues.

STANDARD OF REVIEW

"When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCF." *Id.* (quoting *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011)).

Rule 56, SCRCF provides:

(c) The [summary] judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (emphasis added)

Under the law, our Supreme Court has established:

"Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Cunningham ex rel. Grice v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003).

"Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Singleton v. Sherer*, 377 S.C. 185, 197, 659 S.E.2d 196, 202 (Ct. App. 2008).

"If triable issues exist, those issues must go to the jury." *Mulherin-Howell v. Cobb*, 362 S.C. 588, 595, 608 S.E.2d 587, 591 (Ct. App. 2005).

The Supreme Court has further addressed the initial burden the moving party carries to succeed on a summary judgment motion:

"A party seeking summary judgment has the burden of clearly establishing by the record properly before the [c]ourt the absence of a triable issue of fact. All inferences from facts in the record must be viewed in the light most favorable to the party opposing the motion for summary judgment. A party who fails to show the absence of a genuine issue of material fact is not entitled to summary judgment even though his adversary does not come forward with opposing materials." *Standard Fire Ins. Co. v. Marine Contracting & Towing Co.*, 301 S.C. 418, 422, 392 S.E.2d 460, 462 (1990) (citations omitted). *Beneficial v. Windham*, App. Case No: 2017-001954

A. There Are Genuine Issues of Fact Requiring a Trial.

In the current case, the District Court erred in granting the Defendant's motion for summary judgment when there are multiple issues of material fact that must be determined by trial under the law.

The undisputed factual issues, as admitted by the Defendant, are:

1. Defendant did not transfer to Dr. Dong any of his research equipment, biological reagents, scientific results, and documents, which had been taken from Dr. Dong illegally, as specified in the Agreement. (Rp 1008-1009)
2. Defendant continued blocking Dr. Dong from accessing MUSC facilities and conducting his teaching activities, as specified in the Agreement. (Rp 1139-1145);
3. The damages to Dr. Dong by depriving Dr. Dong of his equipment, research materials, protocols, and technologies, and his access to MIUSC facilities, all of which were essential for Dr. Dong to continue his research and academic career at the new location and to obtain an equivalent or better position at another university, including his tenured professorship. (Rp 1145-1150);
4. Damages to Dr. Dong by allowing the department chairman, James S. Norris, to continue using Dr. Dong's research funds, equipment, and technologies to obtain grant funds, advance his career, and enrich himself and the University at the expense of destroying Dr. Dong's career and financial well-being. (Rp 651-652)
5. In addition to the material value of Dr. Dong's research assets and the loss of income, the intangible value of these damages to Dr. Dong must also be determined.

Court Records show that Dr. Dong asserted these factual issues in his answers to Defendant's First interrogatory (Rp 956-960), the Memorandum supporting his opposition to the Defendant's Motion for Summary judgment (Rp 521-541), his affidavit (Rp 543-551), and his deposition (Rp 552-590), as well as the hearing of Respondent's motion for summary judgment (Rp 1111-1209). Therefore, the issues are preserved for the Court's review.

Respondent did not dispute these facts. Nor did the Respondent ever raise an opposition to Dr. Dong's contention that these factual issues require a trial. Respondent simply did not present any evidence – not a single witness, affidavit, testimony, or document – to prove these issues of material fact have been resolved. Defendant failed its “burden of clearly establishing by the record properly before the [c]ourt the absence of a triable issue of fact.” *Beneficial, id.*

Therefore, the District Court erred in granting the Defendant's motion for summary judgment when numerous issues of material facts exist; “those issues must go to the jury.” *Mulherin-Howell v. Cobb, id.*

Furthermore, “Summary judgment is inappropriate ‘even when there is no dispute as to the evidentiary facts if there is dispute as to the conclusion drawn from those facts. All ambiguities, conclusions, and inferences arising in and from the evidence must be construed most strongly against the movant.’ *Clyburn v. Sumter*

Co. Sch. Dist. 17, 311 S.C. 521, 522-523, 429 S.E.2d 862, 863 (Ct. App. 1993) (citations omitted)” *Lanham v. Blue Cross*, 338 S.C. 343, 526 S.E.2d 253 (Ct.App. 2000)

B. The Respondent Failed its Burden of Proving The Lack of Genuine Issues of Material Facts As Required By Law.

The District Court erred in granting the Defendant’s motion for summary judgment when the Defendant failed its burden of proving the lack of genuine issue.

The Supreme Court commanded:

“A party seeking summary judgment has the burden of clearly establishing by the record properly before the [c]ourt the absence of a triable issue of fact. All inferences from facts in the record must be viewed in the light most favorable to the party opposing the motion for summary judgment.” *Standard Fire Ins. Co. id.*

Contrary to the law, Defendant failed to present any evidence required by the law, “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits,” to support his motion for summary judgment. Defendant also gave no argument or evidence to contradict the issues of material fact as stated above in section A.

Instead, Defendant raised two issues to support its motion for summary judgment, both of which were questions of material fact: (1) “Plaintiff’s sole cause of action for breach of contract is barred by the applicable, three-year statute of

limitations” and (2) “Plaintiff cannot present sufficient evidence MUSC breached a separation agreement ... or incur any damages if Plaintiff could present sufficient evidence of breach.” (See Defendant’s Motion for Summary Judgment, Rp 606).

None of these issues provide grounds for a summary judgment. Whether a contract has been breached or if the evidence presented is adequate to demonstrate the breach or the extent of damages resulting from the breach are questions of material fact that must be resolved at trial. See Rule 56(d). The Supreme Court has stated: “If triable issues exist, those issues must go to the jury.” *Mulherin-Howell v. Cobb*, 362 S.C. 588, 595, 608 S.E.2d 587, 591 (Ct. App. 2005).

Furthermore, Defendant provided no evidence to support its issues. The Defendant did not produce any witness, affidavit, or document to show that the breach occurred three years before the Complaint was filed or the contract was fully implemented. Defendant only attached the Separation Agreement filed by Dr. Dong and Dr. Dong’s deposition transcript but failed to explain how the Agreement or any part of Dr. Dong’s testimony supports the Defendant’s argument.³

³. Only one citation of Dr. Dong’s Deposition, “According to Dr. Dong, MUSC breached the Agreement no later than June 17, 2010, forty-five days after the Agreement was signed on May 3, 2010,” citing Dr. Dong’s deposition, P58, L1-23. (Rp 1225) However, there is no such statement by Dr. Dong on P58 or anywhere in Dr. Dong’s deposition transcript. (Rp 1221-1247)

The Court has long established:

“On a motion for summary judgment, the moving party carries the burden of proof *even when the nonmoving party does not submit any evidence in opposition.*” *Beneficial v. Windham*, 431 S.C. 256, 267 (2020) (emphasis added)

Here, Defendant as “[the] party seeking summary judgment has the burden of clearly establishing by the record properly before the [c]ourt the absence of a triable issue of fact. All inferences from facts in the record must be viewed in the light most favorable to [Dr. Dong,] the party opposing the motion for summary judgment. A party who fails to show the absence of a genuine issue of material fact is not entitled to summary judgment *even though his adversary does not come forward with opposing materials.*” *Standard Fire Ins. Co.*, 301 S.C. at 422, 392 S.E.2d at 462 (emphasis added) (citations omitted).” *id.* at 267. Here, however, Dr. Dong did provide his affidavit, deposition, and pleadings in supporting his Opposition to Defendant’s motion for summary judgment.

Therefore, the District Court erred in granting the Defendant's motion for summary judgment because multiple issues of material facts needed to be determined, and the defendant failed to prove that there was no genuine issue with the evidence.

For the same reasons, the District Court also erred in denying Dr. Dong's motion for reconsideration and his motion to amend the district court’s order

granting the Defendant's motion for summary judgment. In denying Dr. Dong's motions, the District Court incorrectly stated that he failed to provide an affidavit and supporting documents. This error pertains to both matters of law and fact.

First, it is the burden of the moving party, the defendant, to provide proof of the lack of genuine issues of fact. "[The Defendant] fails to show the absence of a genuine issue of material fact is not entitled to summary judgment *even though his adversary does not come forward with opposing materials.*" *Standard Fire Ins. Co, id.* District court's shifting the burden of proof to the nonmoving party contradicts the established rulings by this Court and the Supreme Court.

Secondly, Dr. Dong did testify about the facts and argued pro se at the summary judgment hearing. Dr. Dong also provided pleadings, an affidavit, and transcript of his deposition in his opposition to the summary judgment, even though he is not required to "come forward with opposing materials." *id.* In contrast, the Defendant's counsel did not produce any witness, affidavit, or any document to support his argument as required by the law.

II. The district court erred in limiting the discovery to practically nonexistent and issuing the summary judgment without allowing Dr. Dong the opportunity to conduct a meaningful discovery.

The Law:

"Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete

discovery." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). (emphasis added)

“Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Brockbank v. Best Capital Corp.*, *supra*. Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. American Tel. & Tel. Co.*, *supra*. This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Id.*” *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 363, 563 S.E.2d 331, 334 (2002) (emphasis added)

In the current case, the district court erred in restricting Dr. Dong’s discovery to practically nonexistent and granting the Defendant’s motion for summary judgment before Dr. Dong could have a meaningful discovery.

From the onset, Defendant deployed a defense strategy of delaying, hampering, and blocking Dr. Dong’s discovery to prevent Dr. Dong from gathering evidence but pushing for a summary judgment before any meaning for discovery could be completed. The district court allowed such a scheme that deprived Dr. Dong of due process.

Briefly, the court records show that:

1. The Defendant refused to answer Dr. Dong’s Request for Production by responding to each question as “too broad and ambiguous.” Then, Defendant filed a motion to alter or amend, requesting the district court to reverse its decision

granting the motion to compel but to restrict the scope of Dr. Dong's discovery to only emails "directly to or from Dr. Dong and Dr. Stephen Lanier no earlier than 2010."⁴. This restriction precluded the evidence of wrongdoings by the Defendant and the Agreement was Defendant's proposed ways to mitigate the damages to Dr. Dong.

The district court granted both of the Defendant's requests and denied Dr. Dong's motions to compel and expand the scope of production.[] These decisions prevented Dr. Dong from obtaining the documents to show (1) the legal takeover of Dr. Dong's research by the department chairman at the time, James Norris, and (2) the breach of the Separation Agreement by blocking Dr. Dong from access to MUSC campus and not returning Dr. Dong's assets, both of which are essential for continuing his academic and research career.

2. The District Court strictly enforced an arbitrary timeline over Dr. Dong's due process right for discovery. While the Defendant was stonewalling Dr. Dong's deposition requests, the District Court repeatedly denied Dr. Dong's motions for extending the timeline for deposition and motions for a protective order due to his documented lung infection and eye surgeries. Instead of using the "good cause" standard, the district court denied Dr. Dong's motions based on the motions

⁴. Dr. Lanier was one of the perpetrators who participated in the illegal seizure of Dr. Dong's research assets, taking over Dr. Dong's research operations, and had an interest in covering up the wrongdoing.

“conflicted with the court’s scheduling order.” In contrast, the district court granted numerous motions for a protection order filed by the Defendant’s attorneys for various minute reasons, including multiple attorneys taking consecutive vacations. (See Statement of the Case) These orders took many weeks off the short timeline for Dr. Dong to take depositions. Furthermore, every time the Defendant filed a motion, the court stayed the process until it issued a decision. However, the district court did not extend the deadline in the Schedule Order. This included when Dr. Dong filed an interlocutory appeal for the court’s decision to restrict discovery – a violation of the due press right that the damages cannot be cured after the trial. Under the rules, once an appeal is filed, the jurisdiction is transferred to the Appellate Court, the district court loses the jurisdiction, and all proceedings are stayed until the Appellate Court issues a decision.⁵ (See Statement of the Case for citations)

As a result, the District Court granted the Defendant’s motion for summary judgment without allowing Dr. Dong to take any deposition of his witnesses.

The Superior Courts, including this Court, have long established:

“An affirmative duty does exist to answer interrogatories and respond to requests to produce.” *CFRE, LLC v Greenville County Assessor*, 395 S. C. 67, 83, 716 S. E. 2d 877, 855 (2011).

⁵. The Court denied the interlocutory appeal because the decision was not final.

“Objections to interrogatories must be specific and supported by a detailed explanation why the interrogatories are improper or may result in labor of the objections.” *In re Folding Carton Antitrust Litigation*, 83 F.R.D. 260, 264 (N.D. Ill. 1979).

“The mere statement by a party that the interrogatories were ‘overly broad, burdensome, oppressive, and irrelevant’ is not adequate to voice a successful objection to an interrogatory.” *Josephs v. Harris Corp.* 677 F.2d 985, 992 (3d Cir. 1982). “[Such statements] are, standing alone, meaningless and will be found meritless by the court. *Curtis v. Time Warner Entm’t-Advance/Newhouse P’ship*, 2013 WL2099496 at *2 (D.S.C. May 14, 2013).

The district court contradicted these superior court’s rulings by endorsing the Defendant’s refusal to produce the requested documents and by preventing Dr. Dong from depositing the witnesses.

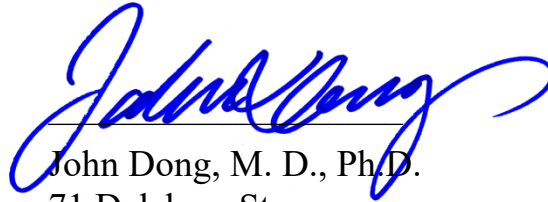
Therefore, the “summary judgment is not appropriate [because] further inquiry into the facts of the case is desirable to clarify the application of the law,” and such “a drastic remedy, which should be cautiously invoked[,] [] improperly deprived of [Dr. Dong] a trial of the disputed factual issues.” *Lanham, id.*

CONCLUSION

HEREBY, for the reasons stated above, Appellant respectfully requests the honorable Court to REVERSE the Summary Judgment and remit the case to the district court for further proceedings under the Due Process.

Respectfully Submitted,

March 21, 2025;



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