

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

FIFTH JUDICIAL CIRCUIT  
COURT OF COMMON PLEAS  
CIVIL ACTION NO.: 2019-CP-40-06624

Abigail Rogers,

Plaintiff,

**ORDER GRANTING  
DEFENDANTS’ MOTION FOR  
SUMMARY JUDGMENT**

-vs-

Benedict College, Roslyn Clark Artis,  
Janeen Witty, and Charles Johnson,<sup>1</sup>

Defendants.

**RECEIVED**  
**Apr 15 2025**  
SC Court of Appeals

Defendants’ Motion for Summary Judgment under Rule 56, SCRPC, came before this Court and is now ripe for ruling. In view of the pleadings filed, applicable law, and arguments of counsel, the Court grants Defendants’ Motion for Summary Judgment, and dismisses the action in its entirety with prejudice, with each side to bear its own costs and fees.

Plaintiff Abigail Rogers is a former faculty member at Benedict College (the “College”). Collectively, Defendants are Benedict College, its President Roslyn Clark Artis, its Vice President for Academic Affairs Janeen Witty, and its Chairman of the Board of Trustees Charlie Johnson

Plaintiff has brought a total of six (6) causes of action<sup>2</sup> against these Defendants, variously related to the College’s removal of three positions from the membership of its Board of Trustees in 2019, including the “faculty representative” position, and her termination from employment with the College in the Fall of 2019.

---

<sup>1</sup> The proper name for Defendant “Charles Johnson” is “Charlie Wilbur Johnson.”

<sup>2</sup> Plaintiff has voluntarily dismissed her Second Cause of Action and her Eighth Cause of Action, which were related to her administrative suspension with pay in the Fall of 2018, and a purported claim under the South Carolina Non-Profit Corporation Act.

## FACTUAL RECORD

Benedict College was founded in 1870, then as the “Benedict Institute,” to educate recently emancipated Black persons and prepare them to be “a power for good in society.” In 1894, the South Carolina legislature chartered Benedict College (the “College”) as a liberal arts college, and the College remains listed as a non-profit corporation by the South Carolina Secretary of State. From 1994 until 2017, David Swinton served as the College’s President.

Plaintiff Abigail Rogers joined Benedict College as a faculty member in 1995.

Then-President Swinton personally recruited her to teach criminal justice courses at the school.

Throughout Plaintiff’s time at the College, students often complained about the way she treated them. For example:

- In 1998, Plaintiff’s Department Chair noted that she was “receiving numerous complaints from students in your classroom concerning your classroom demeanor that she termed classroom student victimization, whereby your students are intimidated, ridiculed, humiliated, made to feel inferior and berated in the presence of other students.” She found Plaintiff’s behavior to be “unethical and unprofessional.”
- By 2008, after continuing to receive complaints about Plaintiff’s behavior towards students, her Department Chair reported that Plaintiff’s “professional behavior, teaching quality, and general demeanor historically have been so contrary to Benedict’s stated ideas and policies that several faculty, student, and parents alike question how Ms. Rogers has been able to maintain such longevity at this institution.” Her supervisory chain – including incoming Vice President for Academic Affairs Janeen Witty – recommended to President Swinton that the College remove Plaintiff from the faculty.

Mr. Swinton did not act on any of these requests. Indeed, despite her abuse of students, and even though some of Plaintiff’s supervisors recommended that she be removed from the faculty and not granted tenure, the College granted Plaintiff tenure in 2012.

In June 2017, Benedict College's Board of Trustees unanimously appointed Dr. Roslyn Clark Artis to replace Dr. Swinton as the College's President. At that time, Dr. Janeen Witty was serving as the College's Vice President for Academic Affairs, and Charlie Johnson was serving as the Chairman of the College's Board of Trustees. During the academic year 2017-2018, Plaintiff and the individual Defendants had little interaction.

**A. PLAINTIFF'S ADMINISTRATIVE SUSPENSION IN FALL 2018.**

In the fall of 2018, the College again began to receive complaints from students about Plaintiff's abusive manner. Several students from her "Court System" class submitted an initial set of complaints at the beginning of the semester on August 20, 2018, which included, but were not limited to, the following:

- Plaintiff told them they would have to wait if she was late to class, and that Plaintiff would be late to class.
- Plaintiff told them that "[i]f one person messes up we all mess up and we all get a zero."
- Plaintiff made the comment that "If I dismiss the class early she still will get paid."

One month later, in September 2018, the College received other student complaints about Plaintiff, which detailed Plaintiff's insults to the students in question, changing the subject of an examination, telling one student she would never be a lawyer or make it to law school, and commenting that "she hates seeing black men with white women."<sup>3</sup>

In October 2018, the College continued to receive student complaints about Plaintiff, with one student complaining that Plaintiff insulted him by stating that he was "wasting her time" and

---

<sup>3</sup> Dr. Charles Austin, Sr., then the College's interim Dean of the School of Arts and Sciences, testified that he did not take note of Plaintiff's racist statement when he reviewed the student complaint. He also testified that he found the statement "disturbing," and that if he had not overlooked the statement, he would have addressed the matter with Plaintiff.

“needed an easier class.” By mid-October 2018, it became apparent to Plaintiff’s supervisor, interim Dean Charles Austin, that the relationship between Plaintiff and two of her students had deteriorated to “a very toxic level.” Consequently, he recommended to Vice President Witty that he should supervise the students for remainder of the semester.

After receiving Dr. Austin’s directive, Plaintiff inflamed the situation further by sending an email to the two students. The email directed them not to return to her class, not to contact her for any reason, and not to even contact other students in the class about work or assignments. As a result, the other students in Plaintiff’s class became concerned about Plaintiff’s policy that “the hand of one is the hand of all” and circulated a text threatening bodily harm to the complaining students.

After he reviewed Plaintiff’s email, Dr. Austin told Plaintiff that she had “exacerbated an environment of tension between students in your class,” and at that point, he recommended that Plaintiff be removed from the classroom until further notice. On October 23, 2018, the College placed Plaintiff on a paid administrative leave while the College investigated the student complaints against her. In response, Plaintiff hired counsel to challenge the College’s decision, and on November 20, 2018, the College’s “Faculty & Staff Grievance and Appeals Committee” reviewed the matter and recommended that Plaintiff be permitted to return to duty effective December 15, 2018.<sup>4</sup> The Committee also recommended that Plaintiff and the College agree on a “Performance Improvement Plan and Conflict Resolution Plan” for Plaintiff.

Plaintiff returned to the classroom in Spring 2019 and completed the Performance Improvement Plan by the end of the semester.

---

<sup>4</sup> By December 15, 2018, Plaintiff no longer had any duties concerning classes held in the Fall 2018 semester.

**B. BENEDICT COLLEGE CHANGES THE COMPOSITION OF ITS BOARD OF TRUSTEES IN 2019.**

When Dr. Artis became President of the College in 2017, she noted that the membership of the Board of Trustees included as voting members (1) the President herself, (2) one position elected annually by the faculty, and (3) one position elected by the student body. She specifically told the Board that she was concerned that these three positions – including her own – involved an “obvious conflict of interest.” She also noted that the faculty representative on the Board – Dr. Samuel Darko<sup>5</sup> – had refused to vote for a budget that did not include salary increases for faculty, even though the “institution was incredibly financially constrained.”

Charlie Johnson, as Chairman of the Board of Trustees, shared these concerns. For that reason, on April 9, 2019, Chairman Johnson appointed an “Ad Hoc Committee on Governance” to review the issue and make a recommendation to the full Board concerning the status of the President, faculty/staff representative, and the student representative as voting Board members.

On April 11, 2019, Benedict’s faculty elected Plaintiff to replace Dr. Darko at the end of his service on the Board. Apparently believing that she would *immediately* replace Dr. Darko on the Board in April 2019, Plaintiff contacted several other Board members and told them she would immediately assume Dr. Darko’s position. In response, Chairman Johnson and Board member William Thomas wrote a letter to Plaintiff, congratulating her on her election, but explaining that her term would commence at the beginning of the *following* academic year, i.e., after new member orientation in the 2019-20 academic year.

---

<sup>5</sup> At the beginning of the Spring semester of 2019, Dr. Samuel Darko, a professor of environmental engineering at the College, was serving as the elected faculty representative on the Board. Dr. Darko served in this capacity until the beginning of the 2019-2020 academic year.

In any event, on May 1, 2019, at the request of Chairman Johnson, Dr. Artis sent the Board's Ad Hoc Committee on Governance a memorandum detailing whether peer institutions permitted faculty and student representatives to serve as voting members on their boards of trustees. Of the 45 institutions reviewed, fewer than 5 institutions permitted faculty and/or student representatives to be voting members of their respective Boards. Of the 6 HBCUs surveyed, none permitted faculty and student representatives to serve as voting members, and only one – S.C. State University – permitted these representatives to serve as non-voting members.

Informed by this research, at the Board of Trustees meeting on May 10, 2019, the Board voted to adopt the committee's recommendation to remove the three positions – President, faculty representative, and student representative – as voting members of the Board. Chairman Johnson notified Plaintiff of the Board's decision by letter dated June 7, 2019.

Later that summer, concerned that notice of its meeting on May 10, 2019 was insufficient, the Board decided to vote again on the matter at the beginning of the 2019-20 academic year. For that reason, counsel for the Board contacted Plaintiff's counsel on July 25, 2019, and advised him that the Board would notify Plaintiff of the next Board meeting, which it did.

At a special Board meeting for September 18, 2019, the Board voted again to adopt the proposed changes in Board membership. Plaintiff received notice of the special meeting, but was recorded as "absent" from the meeting. Consequently, the Bylaws were updated, and the President, faculty representative, and student representative were removed as voting members of the Board.<sup>6</sup>

**C. PLAINTIFF'S EMPLOYMENT WITH BENEDICT COLLEGE IS TERMINATED IN THE FALL OF 2019.**

---

<sup>6</sup> Overall, the maximum number of members who could serve on the Board was reduced from 36 to 30.

When the Fall semester began in August 2019, Plaintiff had completed her Performance Improvement Plan and was otherwise a tenured faculty member in good standing at the College. However, from the very beginning of the Fall 2019 semester, students again began complaining about Plaintiff's conduct, such as being late, dismissing their concerns about errors in the schedule, dismissing them from the class, opining that she could not be fired, and otherwise behaving in an unprofessional manner. On September 4, 2019, Plaintiff met with her new interim Dean, Dr. Richard Miller, to discuss these issues.

By September 6, 2019, Dr. Miller reported to Dr. Witty that his review of the most recent student complaints and Plaintiff's faculty file led him to "recommend that Ms. Rogers be immediately removed from her classroom teaching responsibilities and given non-teaching duties as determined by her department chair, Dr. Leon Geter." Dr. Artis and Dr. Witty conferred and directed Dr. Miller to complete his review of Plaintiff's entire file before making a final recommendation. Dr. Witty also voiced her concern that assigning Plaintiff a non-teaching position at full regular pay would be regarded as "rewarding bad behavior."

On September 16, 2019, Dr. Miller submitted an "Administrative Review of Faculty File of Ms. Abigail Rogers" to Dr. Witty. The review indicated that Plaintiff's file was "replete with multiple filings of student complaints along with documentation from academic administrators of inappropriate, unprofessional behavior, and neglect of faculty compliance with expectations...It is clear that over a lengthy period of time Ms. Rogers has exhibited a consistent pattern of disrespectful and demeaning behavior toward students, disregard of faculty expectations, poor classroom management skills, and an intimidating classroom culture." Dr. Miller also included the following recommendation:

Ms. Rogers should be removed from any interaction with students and, as a tenured faculty member, be assigned non-teaching responsibilities. As an interim dean of less than three (3) months, I leave it to the discretion of the Vice President for Academic Affairs, and President to pursue any additional course(s) of action.

However, before Dr. Witty or Dr. Artis could act on Dr. Miller's recommendation, another troubling issue came to the College's attention.

At the beginning of the Fall 2019 semester, Plaintiff was concerned about the prospect of not serving her term as the faculty representative on the College's Board of Trustees. For that reason, Plaintiff sought out student body president Jordan Rice-Woodruff to enlist his aid, and the aid of other students, in opposing changes to the membership of the College's Board of Trustees.

According to Rice-Woodruff, Plaintiff pursued and solicited his support in the following ways:

- On August 22, 2019, Plaintiff approached Rice-Woodruff near the chapel, and told him that the faculty and student positions were in the process of being removed from the Board. Plaintiff identified individuals that Rice-Woodruff could contact to "help us get this overturned into our favor."
- Plaintiff also asked Rice-Woodruff to "put the matter out on social media; to spread the word to people on campuses; and also...to call those individuals [whose contacts I received from her]."
- Days after, Plaintiff asked another student, Henry Peterson, for Rice-Woodruff's cell phone number, which Peterson gave to Plaintiff.
- Later, on September 12, 2019, Plaintiff again contacted Rice-Woodruff and identified numerous individuals that she wanted him to contact to "express your concern that the faculty staff and student seats are taken off the board by the Board of Trustees."
- On September 14, 2019, in an effort to prompt Rice-Woodruff to write the letters she wanted him to send to the Board members, Plaintiff sent Rice-Woodruff "buzzwords" to use in his correspondence. Plaintiff also stated "Jordan you must go to social media also and get yourself some support you can't do this alone judge Rogers [*sic*]."<sup>7</sup>

---

<sup>7</sup> Rice-Woodruff also stated that, in the same telephone call on September 12, 2019, Plaintiff offered to write letters of recommendation to the USC School of Law both for him and for Henry Peterson. To Rice-Woodruff, it appeared that Plaintiff was offering to write him a recommendation if he did as she asked.

- Rice-Woodruff did not send out letters as Plaintiff requested. Instead, he requested a meeting to discuss the matter with Dr. Artis and Chairman Johnson, which he later cancelled due to his own illness.
- On September 16, 2019, Rice-Woodruff received a telephone call on his cell phone from the WIS news station, which stated that Plaintiff had “given them my contact information and they wanted to speak with me about the Board of Trustees matter.” Rice-Woodruff did not give Plaintiff permission to share his contact information with outside media outlets, and was alarmed that she had done so.
- After receiving the telephone call from WIS, Rice-Woodruff went to the College’s Human Resources office, and was joined there by Henry Peterson. At the HR office, Rice-Woodruff and Peterson wrote out statements memorializing these events.
- Rice-Woodruff testified that no one at Benedict recommended any specific words to use in his statements, and confirmed that the events as described in his statements were true.

Following receipt of Rice-Woodruff’s and Peterson’s statements, Dr. Witty decided to suspend Plaintiff without pay, and recommended to Dr. Artis that Plaintiff’s employment with the College be terminated.<sup>8</sup> Plaintiff received Dr. Witty’s suspension notice on September 16, 2019, and the following day, Dr. Witty requested permission to convene the “Ad Hoc Committee” referenced in § 6.2.5 of the College’s Faculty Manual.

In accordance with § 6.2.5 of the College’s Faculty Handbook, on September 18, 2019, Dr. Witty convened the Ad Hoc Committee to review her recommendation of termination. The Ad

---

<sup>8</sup> Under § 6.2.4 of the College’s Faculty Manual, a tenured faculty member may be fired for “adequate cause,” which includes, but is not limited to, “inability to perform essential functions of the job” to “other conduct prejudicial to the College.” The same section permits the College, at its discretion, to place the faculty member on leave without pay pending the outcomes of the hearing and appeals processes.

Hoc Committee reviewed all evidence presented to it by the College, and following its review, unanimously endorsed Dr. Witty's recommendation to terminate Plaintiff's employment.

Thereafter, Plaintiff appealed the recommendation of the Ad Hoc Committee to the full Faculty and Staff Grievance and Appeal Committee as permitted by § 6.2.6 of the College's Faculty Handbook.<sup>9</sup> In consultation with its legal counsel, the College outlined hearing procedures in a letter to Plaintiff's counsel, and delivered documents it intended to use at the hearing to Plaintiff's counsel.

Plaintiff and her counsel both appeared before the Faculty and Staff Grievance and Appeal Committee on October 23, 2019, and presented Plaintiff's argument. Dr. Witty presented the argument of the College. Following these presentations to the eight members on the committee, six (6) voted to recommend termination, and two (2) voted against termination.

After receiving the recommendation of the Faculty and Staff Grievance and Appeal Committee, Dr. Artis was required to make the final decision regarding the matter. She considered the recommendation of the committee and decided that terminating Plaintiff's employment was the appropriate decision. In Dr. Artis's view, Plaintiff's conduct was "grossly inappropriate."

After receiving notice of Dr. Artis's final decision, Plaintiff filed her Complaint against the Defendants on November 25, 2019, and a few days later filed an Amended Complaint.

---

<sup>9</sup> The Faculty and Staff Grievance and Appeal Committee is required to "review the petition for appeal and will hear the appeal within ten (10) days of receipt for appeal or as soon thereafter as feasible. The Committee will, after due deliberation, with or without the benefit of further hearings, issue its recommendation to the President." The President of the College reviews the recommendation of the Committee and makes the final decision on the appeal.

**PLAINTIFF'S AMENDED COMPLAINT**

Plaintiff has voluntarily dismissed her Second and Eighth Causes of Action. Her remaining

Causes of Action are as follows:

1. Against **Benedict College** only, Plaintiff has brought the following claims:
  - Breach of Contract (First Cause of Action) – Plaintiff claims that Benedict College breached its Faculty Manual by purportedly failing to abide by the procedures set forth in the College’s Faculty Manual regarding her appeal of her termination in the Fall of 2019. She also claims that her termination breached the Faculty Manual’s provision that tenured faculty could only be terminated “for cause.”
  - Breach of Contract (Third Cause of Action) – Plaintiff claims that Benedict College breached her “Faculty Contract” for the academic year 2019-2020 when it terminated her.
  - Declaratory Relief (Fourth Cause of Action) – Plaintiff seeks a declaratory judgment that the action of the Board of Trustees to eliminate positions from the Board, including her own, was “unlawful.”
2. Against **Benedict College and individual Defendants Artis, Witty, and Johnson,** Plaintiff has brought the following claims:
  - Breach of Contract Accompanied by a Fraudulent Act (Fifth Cause of Action) – Plaintiff claims that the Defendants fraudulently interfered with her Faculty Contract and the Faculty Manual by “secretly” ghost-writing the student complaints that led to her termination, by “secretly encouraging” the Board of Trustees to eliminate her position, among others, from the Board, and by “improperly” encouraging others to participate in these “secret actions.”
  - Civil Conspiracy (Seventh Cause of Action) – Plaintiff claims that Benedict College and the individual Defendants “combined for the purpose of injuring Plaintiff,” but does not otherwise distinguish this cause of action from any of her other causes of action.
3. Against **Benedict College and individual Defendants Artis and Witty,** Plaintiff has brought the following claims in her Amended Complaint:
  - Tortious Interference with Contract (Sixth Cause of Action) – Plaintiff claims that Defendants Artis and Witty “intentionally procured” breaches of the Faculty Contract and the Faculty Manual “without justification.”

### LEGAL STANDARD

A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issues. *Loadholt v. South Carolina State Budget and Control Bd., Div. of General Services, Ins. Reserve Fund*, 339 S.C. 165, 169, 528 S.E.2d 670, 672-73 (S.C. App. 2000). To the extent Plaintiff's declaratory judgment action is based on an alleged contract, "[o]ne cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties." *S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 655, 667 S.E.2d 7, 12 (S.C. App. 2008). In construing a contract, the court "must first look at the language of the contract to determine the intentions of the parties." *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). "[I]f the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect." *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 498, 649 S.E.2d 494, 501 (S.C. App. 2007); *Kirkland v. Wolfson*, No. 2019-000203, 2022 WL 951251, at \*3 (S.C. App. 2022).

As to other claims, "[s]ummary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Rule 56, SCRCP; *Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 250, 734 S.E.2d 161, 164 (2012) (citing *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002)). Summary Judgment is appropriate when "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." *Gecy v. S.C. Bank & Tr.*, 422 S.C. 509, 516, 812 S.E.2d 750, 754 (S.C. App. 2018). As stated in *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023):

We now clarify that the “mere scintilla” standard does not apply under Rule 56(c). Rather, the proper standard is the “genuine issue of material fact” standard set forth in the text of the Rule. As we stated in *Town of Hollywood v. Floyd*, “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” 403 S.C. at 477, 744 S.E.2d at 166.

440 S.C. at 463-64, 892 S.E.2d at 301.

### LEGAL ARGUMENT

**I. PLAINTIFF’S FIRST CAUSE OF ACTION FAILS BECAUSE THERE IS NO GENUINE ISSUE OF MATERIAL FACT SUGGESTING THAT BENEDICT COLLEGE BREACHED ANY PROVISION OF THE FACULTY MANUAL REGARDING HER TERMINATION IN 2019.**

Plaintiff’s First Cause of Action is a claim for a Breach of Contract against the College based on her termination in 2019. Plaintiff claims that the College breached its Faculty Manual in the following ways:

- (a) by failing to comply with the procedures set forth in the Faculty Manual, including Section 6.2.5.
- (b) by failing to give Plaintiff notice of the Ad Hoc Committee hearing.
- (c) by failing to provide for a “fair” and “impartial” hearing, or to allow for a consideration of “all the evidence.”
- (d) by imposing improper and unlawful restrictions on Plaintiff’s participation in the hearing of the Faculty and Staff Appeals Committee, including, inter alia, not being allowed to present witnesses, not being allowed to have the full participation of counsel, not being allowed to cross-examine witnesses; not being informed of the specific bases for the termination; not being informed of the names of the students who allegedly complained; not being allowed to call those students as witnesses; and being limited to thirty minutes in her defense.
- (e) by failing to apply the applicable standard for termination of a tenured faculty member, and
- (f) by incorrectly finding the standard for termination of Plaintiff had been met.

Plaintiff’s First Cause of Action is governed by the South Carolina Supreme Court’s recent ruling in *Crenshaw v. Erskine College*, 432 S.C. 1, 20, 850 S.E.2d 1, 11 (2020), which held that a

tenured faculty member can sue for breach of contract based on alleged breaches of provisions of a faculty manual related to termination of employment. In describing the nature of this type of action against a private college like Benedict College, the Supreme Court stated as follows:

Erskine College is a private institution. This case, therefore, is not about tenure. This case is not about whether Erskine denied Crenshaw due process, academic freedom, or free speech. This case is not about whether Crenshaw was correct the student should be taken to the hospital for evaluation, or whether Erskine's alleged "protocol" was medically unsound and Crenshaw was justified in criticizing it. This case is not about whether Crenshaw should be free to publicly criticize Erskine, or publicly argue it should split from the church. **Rather, this is an ordinary breach of contract case in which the terms of the contract are set forth in The College Faculty Manual.**

432 S.C. at 9-10, 850 S.E.2d at 18 (emphasis added).

Plaintiff's First Cause of Action fails initially because Plaintiff cannot point to a single procedure in §§ 6.2.4, 6.2.5, or 6.2.6 of the Faculty Manual that the College breached, or any damage that may have resulted from any alleged breach.<sup>10</sup> With regard to the initial procedures for terminating tenured faculty members for cause, § 6.2.5 provides as follows:

1. Action to terminate a faculty member for cause may be initiated by any Department Chair, Assistant or Associate Dean of a School, the Academic Vice President, or President upon determination that probable cause may exist to justify termination of the faculty member.
2. The initiating party must submit a written request to the Academic Vice President requesting the convening of a faculty hearing committee to consider the charges or other circumstances motivating the request to terminate the faculty member.
3. With the consent of the President the Vice President for Academic Affairs will convene a standing or Ad Hoc faculty hearing Committee.

---

<sup>10</sup> Plaintiff's reliance on § 4.1.2 of the Faculty Manual – which describes types of academic appointments – is particularly unavailing. In fact, that section specifically notes that a tenured faculty member may be fired "for cause...in accordance with Section 6.2.4" of the Faculty Manual, which is exactly what happened here.

4. The hearing committee will conduct a fair and impartial hearing of all the evidence and make a recommendation to the Vice President for Academic Affairs.
5. The Vice President for Academic affairs will review the decision concerning the matter and notify both the initiating party, the faculty member, and the Dean of the decision.

As set forth in great detail above, Dr. Witty had significant reason to initiate the action to terminate Plaintiff's employment. After the events of 2018 and the Performance Improvement Plan resulting therefrom, Plaintiff was once again the subject of numerous student complaints in the beginning of the Fall 2019 semester. Following his review of these more recent incidents, as well as Plaintiff's previous employment record, Dr. Miller recommended – at the very least – that Plaintiff should be removed from class, and that Drs. Witty and Artis might consider other sanctions as well. While Dr. Witty was reviewing Dr. Miller's recommendation, Jordan Rice-Woodruff reported additional misconduct by Plaintiff that included Plaintiff's release of his personal contact information to outside media outlets without his consent for her own purposes. These events provided ample reason for Dr. Witty to initiate termination proceedings against Plaintiff. As the initiating party, Dr. Witty directly requested permission from Dr. Artis to convene the Ad Hoc Committee, as the Faculty Manual provides, and which Dr. Artis granted.

While Plaintiff complains that she was not given notice of the meeting of the Ad Hoc committee, such notice is not required by the Faculty Manual. Plaintiff also has failed to produce any evidence that creates a genuine issue of material fact that the Ad Hoc Committee members did not conduct a "fair" and "impartial" review of the matter, nor did not consider "all the evidence" to its complete satisfaction.

With the regard to the hearing before the Faculty and Staff Grievance and Appeal Committee, Plaintiff again has failed to produce any evidence that creates a genuine issue of

material fact in support of her First Cause of Action, where § 6.2.6 provides that:

- (a) The Vice President for Academic Affairs will convene the Faculty and Staff Appeals Committee. The Committee will review the petition for appeal and will hear the appeal within ten (10) days of receipt of the appeal or as soon thereafter as feasible. The Committee will, after due deliberation, with or without the benefit of further hearings, issue its recommendation to the President.
- (b) The President will review the recommendation of the Appeals Committee and make the final decision concerning whether to uphold, vacate, or modify the recommendation of the Appeals Committee. The President will then notify all parties of the final decision.
- (c) The decision of the President is final and no further appeal is possible.

In this case, the Faculty and Staff Grievance and Appeal Committee convened on October 23, 2019, which was a date mutually chosen by the parties. The Committee reviewed Plaintiff's petition. Although not required by § 6.2.6, it actually heard argument from both Plaintiff and Dr. Witty. Plaintiff could have presented any supporting documentation she wished. Committee members were free to ask any questions that they wished. The College provided all documents to Plaintiff's counsel that it provided to the Committee. These measures far exceed anything "required" by the Faculty Manual.

Finally, Plaintiff has failed to produce any evidence that creates a genuine issue of material fact in support of her claim, other than her own opinion, that the College did not have "adequate cause" to fire her. Indeed, at every turn, from Dr. Witty's initial recommendation, to the recommendation of the Ad Hoc Committee, to the recommendation of the Faculty and Staff Grievance and Appeal Committee, to the ultimate decision of Dr. Artis as President of the College, each level concluded that adequate cause existed to terminate Plaintiff's employment.

Under South Carolina law, where an employee can only be fired "for cause," the focus of the court's inquiry is not whether the employee actually committed misconduct, but instead

whether the employer had a **reasonable good faith belief** that sufficient cause existed for the employee's termination. *Conner v. City of Forest Acres*, 348 S.C. 454, 464–65, 560 S.E.2d 606, 611 (2002); *Horton v. Darby Elec. Co.*, 360 S.C. 58, 68, 599 S.E.2d 456, 461 (2004) (summary judgment appropriate where “appellant’s conduct was serious enough to proceed directly to termination”); *Lingard v. Carolina By-Prod.*, 361 S.C. 442, 452, 605 S.E.2d 545, 550 (S.C. App. 2004) (the conclusions of employers “do not have to be uncontested fact, but must instead simply be supported by enough evidence to support their good faith belief in the cause for termination”); *Nelson v. Charleston Cnty. Parks & Recreation Comm'n*, 362 S.C. 1, 11, 605 S.E.2d 744, 749 (S.C. App. 2004) (same).

The evidence of Plaintiff’s misconduct in this matter does not merely support a “good faith belief” that termination was justified, it is overwhelming. When Plaintiff’s misconduct allegations again arose in 2019, Dr. Witty received statements not only from complaining students in Plaintiff’s classes, but also from Messrs. Rice-Woodruff and Peterson. There is absolutely no admissible evidence in the record that anyone other than Rice-Woodruff and Peterson wrote their statements.<sup>11</sup> “South Carolina courts have consistently held evidence must amount to more than speculation and conjecture to submit a case to the jury.” *McKnight v. S.C. Dep’t of Corr.*, 385 S.C. 380, 389, 684 S.E.2d 566, 570 (S.C. App. 2009).

Further, Plaintiff’s other arguments to the contrary are unavailing. First, she relies on provisions of the Faculty Manual – such as § 7.2 – which are not related to termination of a tenured

---

<sup>11</sup> In fact, while Plaintiff has made unsupported assertions that Rice-Woodruff did not write his statement, her accusations are refuted directly by Rice-Woodruff’s own sworn testimony. In any event, Plaintiff’s unsupported assertions are inadequate to create a genuine issue of material fact sufficient to withstand summary judgment.

faculty member. Provision § 7.2 is simply *not* a provision of the Faculty Manual applicable to termination of tenured faculty members.

While Plaintiff was dissatisfied with the review and recommendations of Ad Hoc Committee and the Faculty and Staff Appeals Committee, her dissatisfaction with their work is of no importance. There is no evidence in the record that either of these committees failed to meet their obligations, and the mere fact that Plaintiff disagreed with the majority of the members of each committee creates no genuine issue of material fact relevant to this lawsuit.

Finally, Plaintiff has curiously argued that President Artis never rendered a final decision on the recommendations to terminate Plaintiff's employment, as required by § 6.2.6(b) of the Faculty Manual. Plaintiff's argument is curious because it is not only contradicted by President Artis's own testimony describing her decision, it is also contradicted by Plaintiff's own allegations in her Amended Complaint, in which she admits that Benedict College terminated her employment.

For these reasons, Plaintiff's First Cause of Action must be dismissed with prejudice.

**II. PLAINTIFF'S THIRD CAUSE OF ACTION FAILS BECAUSE THERE IS NO GENUINE ISSUE OF MATERIAL FACT SUGGESTING THAT BENEDICT COLLEGE BREACHED ANY PROVISION OF ITS "FACULTY CONTRACT" WITH PLAINTIFF REGARDING HER TERMINATION IN 2019.**

Plaintiff's Third Cause of Action is a claim for a Breach of Contract against the College for an alleged breach of Plaintiff's "Faculty Contract" signed on August 7, 2019, for the academic year 2019-2020. This contract is similar to all faculty contracts signed by the College's faculty members from year to year.

To the extent Plaintiff alleges that she cannot be fired because her "Faculty Contract" – as opposed to the Faculty Manual – lacks a specific termination provision, such a claim is without

merit. The Faculty Contract itself references Plaintiff's "acceptance of this appointment and conditions pertaining thereto." It also requires faculty members, including Plaintiff, to "fulfill responsibilities to the specifications above or in other capacities compatible with his/her qualifications." The College had ample evidence to demonstrate that Plaintiff failed to "fulfill responsibilities" of this type. Because the College viewed Plaintiff's misconduct as "adequate cause" for her termination, Plaintiff was fired.

In fact, even Plaintiff does not appear to believe that she was immune from termination, as the Amended Complaint also states that "[t]o the extent the law implies or allows grounds for termination in the absence of express grounds, those grounds were not present here." Thus, to that extent, Plaintiff's Third Cause of Action mirrors her First Cause of Action, and for the same reasons that the First Cause of Action fails, the Third Cause of Action must also fail.

For these reasons, Plaintiff's Third Cause of Action must be dismissed with prejudice.

**III. PLAINTIFF'S FOURTH CAUSE OF ACTION FOR A DECLARATORY JUDGMENT FAILS BECAUSE (1) IT IS MOOT AND THERE IS NO JUSTICIABLE ISSUE THAT A DECLARATORY JUDGMENT CAN RESOLVE, AND (2) BENEDICT COLLEGE CORRECTLY CONSTRUED AND AMENDED ITS OWN BYLAWS REGARDING MEMBERSHIP OF ITS BOARD OF TRUSTEES.**

Plaintiff's Fourth Cause of Action requests that this Court issue a Declaratory Judgment that "she was wrongfully denied her position on the Benedict College Board of Trustees, that as a result of her election to the Board on April 11, 2019, she has held and still holds such position, that all actions taken by the Board since her denial are of no legal effect." For the reasons set forth below, Plaintiff's claim has no merit and must be dismissed with prejudice.

In April 2019, the College's Bylaws provided that the one member of the Board would be elected annually by the faculty and another would be elected by the student body. In pertinent part, the pre-amendment Bylaws also provided for the following:

- The Board is “self-perpetuating and independent of any control other than this Board in both memberships for the Board and policy of this institution.”
- The Board “shall have the authority to carry out all lawful functions that are permitted by these bylaws or by the articles of incorporation.”
- The Bylaws “may be amended or repealed at a special meeting of the Board by vote of two-thirds of the member[s] present, provided that an exact statement of the proposed amendment or intention to repeal has been provided to the Board of Trustees with the call of the meeting.”
- One-third of Board members are elected at the Annual Meetings of the Board and would serve a three-year term, “with the exception that faculty and staff trustees *shall be elected* from April to April, unless the official connection as faculty or student is served prior to the expiration of the term.” (emphasis added).

The gravamen of Plaintiff’s cause of action is that she wanted to be seated as the “faculty representative” on the Board *immediately* after her election in April 2019. Instead, consistent with the College’s prior practice, Dr. Darko remained as the faculty representative on the Board until the end of the summer in 2019. Plaintiff alleged that Bylaws stated that her “term” ran from April to April, although the actual language in the pre-amendment<sup>12</sup> Bylaws clearly stated that the faculty trustee “shall be *elected* from April to April.” For this reason alone, Plaintiff is not entitled to a Declaratory Judgment in her favor.

Benedict College amended its Bylaws in September 2019 that, among other things, eliminated seats from the Board in September 2019, including the President’s seat, the seat for the student representative, and the seat for a faculty representative.

**A. PLAINTIFF’S FOURTH CAUSE OF ACTION IS MOOT AND DOES NOT PRESENT A “JUSTICIABLE CONTROVERSY.”**

---

<sup>12</sup> The Bylaws in effect prior to the amendments approved on September 18, 2019, are referenced in this Brief as the “pre-amendment Bylaws”.

Under the Declaratory Judgment Act, courts only consider cases presenting a justiciable controversy. *Tourism Expenditure Rev. Comm. v. City of Myrtle Beach*, 403 S.C. 76, 81, 742 S.E.2d 371, 374 (2013); *Byrd v. Irmo High School*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). A justiciable controversy exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract. *Id.* at 431, 468 S.E.2d at 864. By contrast, a “moot” case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court. *Mathis v. South Carolina State Highway Dep’t*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). If there is no actual controversy, this Court will not decide moot or academic questions. *Id.* (citing *Jones v. Dillon–Marion Human Res. Dev. Comm’n.*, 277 S.C. 533, 535, 291 S.E.2d 195, 196 (1982)); *see also Wallace v. City of York*, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981).

This cause of action has become moot on two separate grounds. First, the Board lawfully changed the structure of its membership in September 2019 under the provisions of the College’s Bylaws and the South Carolina Non-Profit Corporation Act (the “Act”). As a result of that change, there is no longer a “faculty representative” seat on the Board, and there is no such seat on the Board for Plaintiff to presently occupy. Thus, she has no “position” on the Board into which the Court can place her.

Second, even if Plaintiff’s interpretation of the pre-amendment bylaws was accurate, her term would have expired in April 2020. Plaintiff is simply not entitled, under any theory of law,

to perpetual membership on the Board.<sup>13</sup> See *Sasser v. S.C. Democratic Party*, 277 S.C. 67, 69, 282 S.E.2d 602, 604 (1981) (“In the instant case, the election has already occurred. It is therefore our determination that the issues raised by this action have been rendered moot.”); *City of Charleston v. Masi*, 362 S.C. 505, 508, 609 S.E.2d 301, 303 (2005) (“We find the District correctly argues that this case regarding the Town residents’ entitlement to vote in the District elections and the entitlement to serve as a District commissioner is moot given that the Town is a nullity.”).

Two exceptions in which the court may address an issue despite mootness are (1) when the issue raised is capable of repetition, yet evading review, and (2) when the question considers matters of important public interest. *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26-27, 630 S.E.2d 474, 478 (2006). Neither exception applies here. As to the first exception, if a similar issue ever arises, the Court will again have an opportunity to review the issue. *Id.* at 27, 630 S.E.2d at 478 (“Although Friends admits that the current situation is capable of repetition, it does not evade review. Should another person bring an action against Friends for a violation of FOIA and Friends fails to produce the requested documents, the Court will have the opportunity to review the issue.”) (citing *Seabrook v. City of Folly Beach*, 337 S.C. 304, 307, 523 S.E.2d 462, 463 (1999)). To determine whether the second exception applies – “matters of important public interest” – the court must find that the issue presents “questions of imperative and manifest urgency.” *Sloan v. Greenville Cnty.*, 361 S.C. 568, 571, 606 S.E.2d 464, 466 (2004). In light of the fact that Plaintiff’s “term” has long since expired, and that the College amended its Bylaws in a manner that moots the entire issue, the matter cannot, as a matter of law, present any question of “imperative and manifest urgency.” *Id.* at 572, 606 S.E.2d at 466 (“In light of these developments, we hold there

---

<sup>13</sup> In fact, because the College terminated Plaintiff’s employment in 2019, her “official connection as faculty” with the College ended prior to the expiration of the term, and she could not continue as a member of the Board under its pre-amendment Bylaws.

is no imperative or manifest urgency in obtaining an advisory opinion on the application of an obsolete procurement ordinance to these completed projects.”).

For these reasons alone, her Fourth Cause of Action must be dismissed with prejudice.

**B. BENEDICT COLLEGE CORRECTLY CONSTRUED AND AMENDED ITS OWN BYLAWS REGARDING THE MEMBERSHIP OF ITS BOARD OF TRUSTEES.**

Even if Plaintiff’s Fourth Cause of Action was not moot, and she could present a justiciable controversy, it would still fail. The Board’s interpretation of its pre-amendment Bylaws was well within its latitude, and in amending the Bylaws, the Board stayed well within the spirit and letter of the existing Bylaws and the Act.

The College’s pre-amendment practice of permitting an incumbent faculty representative to serve on the Board until the end of the summer, and for newly-elected faculty representative to begin his or her term at the beginning of the academic year following his or her election in April, was certainly not forbidden in the pre-amendment Bylaws. It is undisputed that Dr. Darko served on the Board through the end of the summer of 2019, and it is undisputed that Plaintiff received timely notice of the special meeting of the Board called in September 2019.

Plaintiff also argues that these amendments were unlawful and violated S.C. Code Ann. § 33-31-808(b), which provides that “[i]f a director is elected by a class, chapter, or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.” However, Plaintiff’s reliance on S.C. Code Ann. § 33-31-808(b) is misplaced. That statute addresses the “removal” of a particular director, not the permanent deletion of a number of positions on a board of directors. In fact, the Act specifically permits a board of directors to increase or decrease the number of directors on the board “by amendment to or in the manner prescribed in the articles or bylaws.” S.C. Code Ann. § 33-31-803(b); *see also* S.C. Code Ann. § 33-31-1021 (authorizing a board of directors to amend

or repeal the corporation's bylaws). By ignoring S.C. Code Ann. §§ 33-31-803(b) and 33-31-1021, Plaintiff also ignores the "cardinal rule of statutory construction" that, to ascertain and effectuate the actual intent of the legislature, "statutes which are part of the same Act must be read together." *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). Further, sections which are part of the same general statutory law of the state must be construed together, and each provision must be given effect, if it can be done by any reasonable construction. *Smalls v. Weed*, 293 S.C. 364, 370 360 S.E.2d 531, 534 (S.C. App. 1987) (quoting *State v. Fidelity & Deposit Co. of Maryland*, 114 S.C. 511, 104 S.E. 182 (1920)). Plaintiff's argument, if accepted, would require the Court to ignore the difference between removing a specific director and the Board's unquestioned authority – under both the Act and the pre-amendment Bylaws – to determine the number of directors on the Board, to amend its own Bylaws, and to determine membership on the Board.

Under the pre-amendment Bylaws, the College's Board had every right to amend the Bylaws in the manner it did. The Board was, and remains, a "self-perpetuating and independent of any control other than this Board in both memberships for the Board and policy of this institution." The Bylaws could be "amended or repealed at a special meeting of the Board by vote of two-thirds of the member[s] present, provided that an exact statement of the proposed amendment or intention to repeal has been provided to the Board of Trustees with the call of the meeting." Timely notice for the special meeting on September 18, 2019 was given on September 11, 2019 in accordance with the notice provisions of the pre-amendment Bylaws. Thus, the College and its Board were perfectly within their latitude to interpret their Bylaws and act as they did. For these reasons alone, Plaintiff's Fourth Cause of Action must be dismissed with prejudice.

#### **IV. PLAINTIFF'S FIFTH CAUSE OF ACTION FOR A "BREACH OF CONTRACT ACCOMPANIED**

**BY A FRAUDULENT ACT” FAILS BECAUSE THERE IS NO GENUINE ISSUE OF MATERIAL FACT IN THE RECORD SUPPORTING THE CLAIM’S ELEMENTS.**

Plaintiff’s Fifth Cause of Action is a claim for “Breach of Contract Accompanied by a Fraudulent Act” against Benedict College and individual Defendants Artis, Witty, and Johnson. Specifically, Plaintiff alleges that her “2019-2020 Faculty Contract and the Benedict College Faculty Manual constitute binding contracts” with Benedict College, and that each of the Defendants “breached one or more of Plaintiff’s contracts with Benedict as described hereinabove.” Plaintiff also alleges that the Defendants “had fraudulent intent relating to the breaching of the contract” and that they “engaged in fraudulent acts accompanying the breach,” in that they:

- (a) secretly participated in the composition, choice of words, writing, and content of student statements;
- (b) well exceeded the scope of their responsibilities by secretly encouraging the Board of Directors, including Defendant Johnson, to exclude Plaintiff from her rightful position on the Board.
- (c) improperly encouraged other persons, including Benedict employees whose livelihoods were dependant [*sic*] on Defendants, to participate in their secret actions.

For the reasons set forth below, Plaintiff’s Fifth Cause of Action fails and must be dismissed with prejudice.

In order to maintain a claim for breach of contract accompanied by fraudulent act, a plaintiff must prove three elements: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract, not merely to its making; and (3) a fraudulent act accompanying the breach. *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 654, 780 S.E.2d 263, 273-74 (S.C. App. 2015). “With regard to the third element of this claim, the standard of

proof of clear and convincing evidence is applicable.” *Osborn v. Univ. Med. Assocs. of Med. Univ. of S.C.*, 278 F. Supp. 2d 720, 740 (D.S.C. 2003) (emphasis added).

As an initial matter, as set forth above in the discussion of Plaintiff’s First and Third Causes of Action, Plaintiff cannot maintain any of her claims for Breach of Contract. This is fatal to her claim for breach of contract accompanied by fraudulent act. *Hotel & Motel Holdings, LLC*, 414 S.C. at 654, 780 S.E.2d at 274; *Curtis v. Cafe Enterprises, Inc.*, 715 Fed. App’x 268, 270 (4th Cir. 2017) (“Further, because Curtis’ evidence does not support a claim for breach of contract, it cannot support the claim of breach of contract accompanied by a fraudulent act.”). For this reason alone, her claim must be dismissed with prejudice as to all Defendants.

Further, Plaintiff also cannot present admissible evidence supporting the second and third elements of the claim, and most certainly not by “clear and convincing” evidence. For instance, there is no evidence in the record that anyone “secretly participated in the composition, choice of words, writing, and content of student statements,” and Jordan Rice-Woodruff’s sworn testimony actually refutes Plaintiff’s allegations on that point.<sup>14</sup> Other than Plaintiff’s own conjecture, there is no admissible evidence in the record to support her allegations that anyone at the College “secretly encourag[ed] the Board of Directors, including Defendant Johnson, to exclude Plaintiff from her rightful position on the Board,” or that anyone was “improperly encouraged” to “participate in [the Defendants’] secret actions.” For these reasons, Plaintiff’s Fifth Cause of Action must be dismissed with prejudice as to all Defendants.

**V. PLAINTIFF’S SIXTH CAUSE OF ACTION FOR “TORTIOUS INTERFERENCE WITH CONTRACT” FAILS BECAUSE THERE IS NO GENUINE ISSUE OF MATERIAL FACT IN THE RECORD SUPPORTING THE CLAIM’S ELEMENTS.**

---

<sup>14</sup> Plaintiff’s reliance on Sybil Rosado’s testimony is particularly unavailing on this point, as Rosado herself relies on Rosado’s repeating unsubstantiated and hearsay remarks allegedly made by Dr. Green.

Plaintiff alleges her Sixth Cause of Action for “Tortious Interference with Contract” against Defendants Benedict College and individual Defendants Artis and Witty. Plaintiff claims that Benedict College, Artis, and Witty “intentionally procured the breaches and/or otherwise interfered with the [Faculty Manual and Plaintiff’s Faculty Contract].” For the reasons set forth below, Plaintiff’s Sixth Cause of Action fails and must be dismissed with prejudice.

To establish a cause of action for tortious interference with contractual relations, a plaintiff must show: (1) the existence of a contract; (2) knowledge of the contract; (3) intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. *Eldeco, Inc. v. Charleston Cnty. Sch. Dist.*, 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007).

As with Plaintiff’s Fifth Cause of Action, where there is no breach of contract, there can be no recovery for “Tortious Interference with Contract.” Thus, as set forth above in the discussion of Plaintiff’s First and Third Causes of Action, because Plaintiff cannot maintain any of her claims for Breach of Contract, she also cannot maintain a claim for “Tortious Interference with Contract.” *Eldeco*, 372 S.C. at 481, 642 S.E.2d at 732.<sup>15</sup>

Further, because Benedict College is a party to the two contracts referenced in Plaintiff’s Sixth Cause of Action – the Faculty Manual and Plaintiff’s Faculty Contract – the College cannot be a proper party to this claim, and it must be dismissed from this claim with prejudice. *Dutch Fork Dev. Grp. II, LLC v. SEL Properties, LLC*, 406 S.C. 596, 604, 753 S.E.2d 840, 844 (2012) (“one cannot be held liable for tortious interference with a contract to which he is a party”);

---

<sup>15</sup> To the extent Plaintiff bases any Breach of Contract claim, or variant thereof, on the College’s decisions related to her participation or membership on the Board of Trustees, her claim suffers the same fate. She cannot show that any contract was “breached” by those decisions or events, and for those reasons, any related claim must be dismissed with prejudice. Notably, neither the Faculty Manual nor Plaintiff’s annual Faculty Contract address or promise membership on the Board of Trustees.

*Threlkeld v. Christoph*, 280 S.C. 225, 227, 312 S.E.2d 14, 15 (S.C. App. 1984). Similarly, to the extent that Drs. Witty and Artis acted within the scopes of their employment with the College regarding an alleged breach of a contract, they are immune to this claim. *Dutch Fork Dev. Grp. II, LLC*, 406 S.C. at 605, 753 S.E.2d at 844.

Furthermore, there is no admissible evidence supporting Plaintiff's allegation that Benedict College, Dr. Witty, or Dr. Artis acted "outside the scope of their proper roles and of their authority" at any time with regard to Plaintiff's contracts, or how these alleged acts related to an intentional procurement of a breach of contract, or an absence of justification regarding such a breach. In fact, other than making this conclusory allegation, and the equally unsupported allegation that the Defendants acted "with personal motivation," there is simply no admissible evidence in the record that supports any of these allegations. For these reasons, Plaintiff's Sixth Cause of Action must be dismissed with prejudice.

**VI. PLAINTIFF'S SEVENTH CAUSE OF ACTION FOR "CIVIL CONSPIRACY" FAILS BECAUSE (1) IT IS BARRED BY THE INTRACORPORATE CONSPIRACY DOCTRINE, (2) IT IS BARRED BY THE LACK OF "ADDITIONAL ACTS" IN SUPPORT OF THE CLAIM, AND (3) PLAINTIFF'S FAILURE TO PRODUCE ADMISSIBLE EVIDENCE SUPPORTING THE CLAIM'S ELEMENTS.**

Plaintiff alleges her Seventh Cause of Action for "Civil Conspiracy" against Defendants Benedict College and individual Defendants Artis, Witty, and Johnson. For the reasons set forth below, the claim must be dismissed with prejudice as to all Defendants.

**A. PLAINTIFF'S SEVENTH CAUSE OF ACTION IS BARRED BY THE "INTRACORPORATE CONSPIRACY DOCTRINE."**

With regard to the civil conspiracy claim, a corporation cannot conspire with itself. *Broyhill v. Resolution Mgmt. Consultants, Inc.*, 401 S.C. 466, 477, 736 S.E.2d 867, 872 (S.C. App. 2012). However, a civil conspiracy cannot exist when the alleged acts arise in the context of a principal-agent relationship because by virtue of the relationship such acts do not involve separate

entities. *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886-87 (2006), *overruled on other grounds by Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021); *Sales v. Res-Care, Inc.*, 2021 WL 1186553, at \*6 (D.S.C. Mar. 30, 2021) (“With respect to Plaintiff’s civil conspiracy claim, Plaintiff fails to present any colorable argument to challenge the intracorporate conspiracy doctrine, which mandates that there can be no conspiracy between an employer and its employees.”).

While Plaintiff has alleged that “Defendants Witty, Artis, and Johnson were at times acting outside the scope of their agency with Benedict” in support of her civil conspiracy claim, she has failed to produce any evidence supporting such an allegation. Indeed, it would be impossible for these Defendants to conspire with Benedict College – the fourth Defendant that Plaintiff sued for civil conspiracy – outside the scope of their duties as officers or directors of Benedict College.

For this reason alone, Plaintiff’s Seventh Cause of Action is barred and must be dismissed with prejudice.

**B. PLAINTIFF’S SEVENTH CAUSE OF ACTION IS BARRED BY THE LACK OF “ADDITIONAL ACTS” IN SUPPORT OF THE CIVIL CONSPIRACY CLAIM.**

A plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means,<sup>16</sup> (3) together with the commission of an overt act in furtherance of the agreement, and (4)

---

<sup>16</sup> In Justice Kittredge’s concurrence in *Paradis*, he explained that “[i]t is the second element – to commit an *unlawful act* or a lawful act by *unlawful means* – that restores an objective legal standard to this cause of action. When the appellate courts of this state approved of an analytical framework that allowed one’s personal sense of fairness and right and wrong to be sufficient for a civil conspiracy claim, we created a rudderless cause of action. Justice Few correctly observes that the post-*Todd* sanctioned civil conspiracy claim ‘permit[ted] the court and jury to impose liability for lawful, non-tortious conduct based on a court or juror’s sense of fairness or responsibility.’ I do not construe Justice Few’s concurrence as ‘abolishing’ civil conspiracy. Rather, by restoring the traditional elements of a civil conspiracy claim and overruling *Todd*’s so-called special

damages proximately resulting to the plaintiff. *Paradis*, 433 S.C. at 574, 861 S.E.2d at 780 (abolishing the requirement that a plaintiff must plead “special damages” as part of a civil conspiracy claim). Also, in order to state a civil conspiracy following the Supreme Court’s decision in *Paradis*, a plaintiff must also allege “additional acts” that are independent of the basis of any other of the plaintiff’s causes of action.

Although the *Paradis* court held that special damages are no longer a required element of a civil conspiracy claim in South Carolina, Lang’s claim for conspiracy fails on two grounds independent thereof. First, the Magistrate Judge initially recommended dismissal of the conspiracy claim because Plaintiff did not identify concrete acts that are independent of any other alleged wrongdoing. Rather, Plaintiff based his civil conspiracy claim on the same alleged actions that serve as the basis for his other causes of action.

*Lang v. Furman Univ.*, 2022 WL 816455, at \*1 (D.S.C. Mar. 16, 2022); *Doe 9 v. Varsity Brands, LLC*, 679 F. Supp. 3d 464, 494 (D.S.C. 2023) (“But because Plaintiff has not identified “additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in [her] complaint,” *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 682 S.E.2d 871, 875 (S.C. App. 2009), *overruled on other grounds by Paradis*, 861 S.E.2d at 780, she has failed to state a valid claim for civil conspiracy.”).

Similarly, in the instant case, Plaintiff has failed to plead – and certainly has failed to produce evidence of – any “additional acts” in support of her civil conspiracy claim. In fact, Plaintiff herself cannot distinguish between her allegations supporting her other claims and her allegations supporting her civil conspiracy claim.

Indeed, Plaintiff’s own pleading actually requires the court to look to other causes of action to define the nature of her civil conspiracy claim. Her Seventh Cause of Action does not describe

---

damages pleading requirement, this Court returns civil conspiracy to its historical roots.” *Paradis*, 433 S.C. at 578, 861 S.E.2d at 782

a single act taken in furtherance of the alleged civil conspiracy that it is not also alleged in her other causes of action. In fact, this cause of action explicitly incorporates and repeats the allegations supporting her other claims, and adds no new additional acts in support of her civil conspiracy claim.

For instance, in her claims for “Breach of Contract Accompanied by a Fraudulent Act” and “Tortious Interference with Contract,” Plaintiff claims that Dr. Witty, Dr. Artis, and Chairman Johnson “well exceeded the scope of their responsibilities” and acted “with personal motivation” and “outside the scope of their proper roles and of their authority.” The allegations mirror Plaintiff’s allegations in support of her civil conspiracy claim stated as follows:

134. As a result of their personal goals related to Plaintiff as described herein, which were unrelated to any legitimate Benedict goals, Defendants Witty, Artis, and Johnson were at times acting outside the scope of their agency with Benedict.
135. Defendants Witty, Artis, and Johnson had their own independent personal stakes in achieving the unlawful objectives of violating Plaintiff’s rights.

Plaintiff herself cannot explain the differences between her allegations supporting her other claims and her civil conspiracy claim:

Q. I understand. Is there any personal motivation that you’ve already described, and frankly, you’ve described this before when you were talking about personal motivations with regard to paragraph 131, without asking you to belabor the point, is there any personal motivation that is different from an independent personal stake that you reference in both 131 and again in 135? Is there any difference?

A. And as I said, I can’t answer that.

Q. You’re the only person who could answer that. It’s your complaint.

MR. COSKREY: I object to the form.

A. I don’t have an answer. I cannot answer that at this particular time.

For this reason alone, Plaintiff's Seventh Cause of Action is barred and must be dismissed with prejudice.

**C. PLAINTIFF'S SEVENTH CAUSE OF ACTION FAILS BECAUSE SHE HAS NOT, AND CANNOT, PRODUCE ADMISSIBLE EVIDENCE SUPPORTING THE ELEMENTS OF A CIVIL CONSPIRACY CLAIM.**

Plaintiff has presented no evidence that any of the Defendants (1) combined with each other (2) to commit an unlawful act or a lawful act by unlawful means (3) together with the commission of an overt act in furtherance of the agreement (4) that proximately resulted in injuries to her. The record is, in fact, devoid of such evidence. For instance, Plaintiff has failed to produce evidence of any "unlawful act" or "lawful act by unlawful means" committed by a combination of the Defendants. Plaintiff has failed to point to any overt act in furtherance of the alleged conspiracy. In short, Plaintiff has produced no evidence, other than her own unsupported and vague assertions, that any of the Defendants engaged in a civil conspiracy to injure her. *See Rice v. M-E-C Co.*, 2021 WL 5822645, at \*6 (D.S.C. Dec. 8, 2021) ("Plaintiff has failed to demonstrate a genuine issue of material fact as to his civil conspiracy claim because Plaintiff has pointed to no evidence, other than his own unsupported assertions or assumptions, to show that Fisk combined with Lichtenfeld *with the specific intent to commit wrongful conduct and harm Plaintiff as a result.*") (citing to *Paradis*) (emphasis in the original). For this reason alone, Plaintiff's Seventh Cause of Action must be dismissed with prejudice.

**CONCLUSION**

For the reasons set forth above, I hereby GRANT the Defendants' Motion for Summary Judgment, and Dismiss Plaintiff's claims with prejudice, with each side to bear its own costs and fees.

AND IT IS SO ORDERED.

---

The Honorable R. Ferrell Cothran, Jr.  
Fifth Judicial Circuit

\_\_\_\_\_, 2025  
Richland, South Carolina.



Richland Common Pleas

**Case Caption:** Abigail Rogers vs Benedict College , defendant, et al

**Case Number:** 2019CP4006624

**Type:** Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144