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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2019-CP-40-06624
Appellate Case No. 2025-000724

Abigail Rogers, ... Appellant

v.

Benedict College, Roslyn Clark Artis, Janeen Witty,
and Charles Johnson, ... Respondents

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Appellant, Abigail Rogers, is a former tenured professor at Benedict College. She filed this lawsuit on November 25, 2019, following the revocation of her tenure and her termination. (Complaint).

The Respondents are Benedict College, its President, Roslyn Clark Artis; Vice President of Student Affairs, Janeen Witty; and Board Chairman, Charles Johnson.[1] (R. pp. 41-64); (R. pp. 65-88).

Professor Rogers alleged the following claims:(1) breach of contract, (2) declaratory judgment, (3) breach of contract accompanied by a fraudulent act, (4) tortious interference with contract, and (5) civil conspiracy. (R. pp. 65-88).

Respondents filed a Motion for Summary Judgment on March 17, 2023. The Record before the Circuit Court was substantial. (R. pp. 156-731).

Oral argument was held on September 20, 2023. (R. 98-155). After the hearing the Court posed additional questions to the parties and then requested a "follow-up hearing" by WebEx. (R. pp. 743-745). The follow-up hearing was held via WebEx on October 3, 2023 to address questions from the Court about the tenure-revocation process Plaintiff received.[2]

On October 6, 2024, this case appeared on a jury trial roster and Chief Administrative Judge Daniel Coble directed defense counsel to seek a status update regarding its pending motion for summary judgment. (R. pp. 746-750). The case came up for trial again the next month and this time the Plaintiff's counsel reached out to the Court seeking a status update. (R. pp. 739-740). The Court then emailed the parties on November 14, 2024, that there was a miscommunication and a

[1] Charles Johnson's legal name is Charlie Johnson.
[2] Appellant requested a transcript for the second hearing, but it appears there was no Court Reporter.

ruling would be sent to the parties in the next few days. (R. pp. 751-759). On November 18, 2024, the Court wrote again asking if the parties had notes from the "phone conference" held on October 3, 2023, and stated that the Court believed it "discussed [it's] ruling in this October 3rd phone call" and that it believed it told the parties it was granting summary judgment. (*Id.* at R. p. 758). Both defense counsel and plaintiff's counsel alerted the Court by reply that no such discussion occurred. (R. pp. 755-758). Eventually On February 5, 2025, the Court asked for competing proposed orders. (*Id*. at p.753) (R. pp. 764-777); and (R. pp. 778-812).[3]

On March 7, 2025, the circuit court signed the Respondents' proposed order with some modifications and granted summary judgment on all claims. (R. pp. 5-38).

Professor Rogers filed a Motion for Reconsideration on March 17, 2025, which was denied on March 18, 2025. (R. pp. 732-738). Rogers timely filed her Notice of Appeal thereafter. (R. p. 764).

Professor Rogers appeals the decision to grant summary judgment on her breach of contract, tortious interference, and civil conspiracy claims.[4]

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[3] The undersigned aims to be considerate and respectful to the Circuit Court in this account of how the Order came into being. The undersigned hopes this account is perceived that way. The undersigned feels obligated to provide the Court a full account of how the summary judgment order came into existence because of this particular set of circumstances.

[4] Professor Rogers does not appeal the Circuit Court's mootness or justiciable controversy decision on her declaratory judgment claim but does take exception to the Court's passing conclusion that the Board was permitted to stagger Professor Rogers' board term in contravention to the language of its bylaws. This brief holding at p. 23 (R. p. 27) of the Court's Order will be appealed and addressed within the context of Rogers' tort claims.

Professor Rogers also does not appeal the Circuit Court's determination on her breach of contract with a fraudulent act claim but does appeal the initial conclusion in that holding that the Faculty Manual and Annual Contract were not breached. Professor Rogers further challenges the Court's findings about the weight of the evidence at p. 26 (R. p. 30) as applicable to her tortious interference and conspiracy claims.

STATEMENT OF THE FACTS

Abigail Rogers was employed by Benedict College in its Criminal Justice department. (R. pp. 511-514; R. p. 42). She was promoted to Assistant Professor the following year. (R. pp. 513-514).

On April 20, 2012, the College's Board of Trustees voted to confer tenure on Professor Rogers. (R. pp. 515-516). She was promoted to Associate Professor contemporaneously with receiving tenure. (R. pp. 511-514).

Professor Rogers received positive performance evaluations for the 2016-17 and 2017-18 academic years. (R. pp. 517-522). Professor Rogers' performance evaluation scores, when considered collectively, document an improvement over time. (R. pp. 523-539).

Roslyn Clark Artis was appointed President of Benedict College in 2017. (R. p. 158). Dr. Janeen Witty is the College's Vice President for Academic Affairs. (*See* R. p. 5). Charles Johnson is the College's Chairman of the Board of Trustees. (*Id.*).

Professor Rogers, as a tenured professor, was employed pursuant two concurrent contracts: (1) a Faculty Manual, and (2) successive annual contracts.

The Faculty Manual, regarding tenure, states:

> A tenured faculty member is a faculty member who holds a tenure track appointment, has successfully completed the probationary period, and has been awarded tenure by the College. **Tenure means that a faculty member will have continuous employment at Benedict College except for termination for cause, or financial exigency, or restructuring in accordance with Section 6.2.4.**

(R. pp. 624-705). The Faculty Manual, at § 6.2.4 (1) defines cause as:

> [I]ncompetence; significant neglect of duty; persistent refusal to comply with the College's policies; violations of the College's standards of professional responsibility in teaching and research; violation of the College's nondiscrimination, harassment, or equal opportunity policies; dishonesty in teaching or research; falsification of information concerning the qualifications for a position; felony conviction (which means a guilty verdict in a trial, an imposition

> of a sentence, a plea of no contest, or a plea of guilty), inability to perform essential functions of the job; moral turpitude; and other conduct or behavior prejudicial to the College[.]

Further, the Faculty Manual provides that tenured faculty will have "full" academic "freedom" with respect to classroom instruction. (§ 4.2.1).

Professor Rogers' annual contract, in effect at the time of her termination, was dually signed on August 7, 2019. (R. pp. 575-576). It contained a definite term, ending May 15, 2020, and did not describe a procedure for early termination. (*Id.*).

2018-2019 School Year

On October 23, 2018, Vice President Witty placed Professor Rogers on administrative leave, allegedly on the basis of student complaints (R. pp. 540-541).[5] Professor Rogers responded by filing a timely grievance. (R. pp. 542-548).

The College's "Faculty and Staff Grievance and Appeals Committee" met on November 20, 2018, and recommended that Professor Rogers be reinstated but placed on a professional improvement plan. (R. pp. 549-550). According to the College, Professor Rogers "completed [the professional improvement plan] successfully by the end of [the] semester in Spring 2019." (R. p. 162).

Board Election

On April 11, 2019, Professor Rogers was elected to serve in the faculty and staff seat on the College's Board of Trustees. (R. p. 164).

Board Chairman Johnson then informed her that she would not be able to commence her Board service until the following academic year. (R. pp. 556-557).

[5] Vice President Witty had previously attempted to have Professor Rogers terminated over student complaints several years earlier, in 2008.

Next, Chairman Johnson informed Professor Rogers that her Board position had actually been eliminated at the Board's Annual Meeting on May 10, 2019. (R. pp. 558-559).

Professor Rogers challenged her removal from the Board. (*See* R. pp. 560-564). Her counsel sent a letter outlining several violations of the Board's Bylaws, including:

1) The Bylaws state that faculty and student trustees shall be elected from April to April (Art. I, § 3) (R. pp. 708-709).
2) Rogers, a duly elected board member, was not given notice of the May 10, 2019, Board Meeting. (Art. II, § 4) (R. p. 709).
3) Rogers was not removed from the Board by the class that elected her as required by S.C. Code Ann. § 33-31-808(b).

In response, the College, without conceding it erred, mailed a letter to Rogers' attorney saying that Professor Rogers would be given notice of the next Board meeting as a Board member. (R. pp. 565-566).

On September 10, 2019, Professor Rogers' counsel wrote a letter to counsel for the College stating that President Artis had told the Student Body President, Jordan Rice Woodruff, that Professor Rogers was not on the Board and that she would not be invited to sit with other Board members at the convocation ceremony. (R. pp. 567-568). The College's counsel responded that the convocation ceremony would be postponed but did not address President Artis' comments. (R. pp. 569-570).

On September 11, 2019, Professor Rogers received notice of a special board meeting set for September 18, 2019, with the sole purpose of the meeting being to vote on amendments to the Board's bylaws. (R. pp. 571-574). The letter said:

> In effect, these changes eliminate the President, Faculty and Student Trustees from voting membership among other minor revisions designed to clarify and/or amplify Board member rights and Responsibilities.

(*Id*.)

2019-2020 Academic Year

Professor Rogers' one-page definite-term contract for the 2019–20 academic year, which reflected her status as a tenured professor, was signed by Vice President Witty on August 7, 2019. (R. pp. 575-576).

On September 6, 2019, Professor Rogers was again assigned non-teaching duties, allegedly in response to student complaints. (R. pp 577-578).

At the directive of Vice President Witty, Dean Richard Miller conducted "a comprehensive review of [Professor Rogers'] faculty file" including conduct that occurred prior to the formation of Professor Rogers' 2019-2020 contract. (R. pp 579-581). Dean Miller did not recommend termination, writing instead that Professor Rogers should be assigned non-teaching duties while keeping her tenured status. (*Id*. at p. 581).

President Artis testified she was "unhappy with [Dean Miller's] assessment" because she was "not interested in creating a paying job for a faculty member that can't behave." (R. p. 586, lines 17-25-p. 587, lines 1-4).

Termination

On September 16, 2019, Student Body President Jordan Rice Woodruff received telephone call(s) from the media about the seats subject to be removed from the board. (R. pp 594-595); (R. pp. 596-598, ¶ 6). He was in a meeting with the Dean of Student Affairs when he was called by the media. (*Id.*). The Dean of Students directed him to go to Human Resources. (R. pp. 596-598, ¶ 6). There, he was urged to write two statements (one typed and a different one in writing). (*Id*. at ¶ 7). The statements Rice Woodruff wrote suggest that Rogers applied unwelcome pressure on him to oppose the Board's proposed action to remove Board seats at its next meeting. (R. pp. 592-595).

The statements lack meaningful context including that Rice Woodruff had been involved in a previous encounter with President Artis where she attempted to intimidate him:

> I spoke to Ms. Artis about [the removal of Board seats] at a pep rally and she told me not to speak to her about it because, according to her, she knew I was involved in fighting the change and she stated I was 'trying to f*****g sue [her.]'

(R. pp. 596-598, ¶ 5).

The typed and written statements by Jordan Rice Woodruff were used as the basis for terminating the Professor Rogers. (R. pp. 588-591). In fact, right after Rice Woodruff's declaration states that after he completed the statements, President Artis, a campus security officer, and the campus police chief entered the room at which time Artis said:

> [T]hat Abigail Rogers was using [him] as a pawn to get [her] seat back on the board. She then stated to the officers, with [Rice Woodruff] present, that Ms. Rogers was terminated and that the officers were to remove Rogers from "her" [(referring to Artis)] campus immediately.

Professor Rogers was then suspended without pay and escorted off campus. (R. pp. 588-589).

The next day, Vice President Witty sent President Artis a letter requesting that termination proceedings be initiated against Professor Rogers, based on the complaint said to be filed against Rogers by Student Body President Jordan Rice Woodruff. (R. pp. 590-591).

Post-Termination Proceedings

The College's Ad Hoc committee approved the decision to terminate Professor Rogers following an *ex parte* hearing. (R. pp. 599-600).

Next, Professor Rogers requested a hearing before the Faculty and Staff Appeals Committee on October 23, 2019. There, she was limited to a thirty-minute presentation, was not allowed to call or cross-examine witnesses, or have her counsel present on her behalf. (R. pp. 601-603).

The Committee voted 6-2 and then 7-1 in favor of terminating Professor Rogers. (R. pp. 604-608; R. p. 611, lines 15-25-p. 612, lines 1-20). One of the voters flipped their vote to be in favor of termination after the identities of those voting against termination were made public. (*Id*.) ("She [Gwenda Green] changed her vote after we closed the votes [] because she had been told that she would never get promoted if she voted against the college.").

Following that hearing, the President of the College did not review the Committee's ruling and send Rogers a final decision as required by the Faculty Manual. (R. pp. 624-705).

Because of her termination, Professor Rogers was automatically removed from the College's Board of Trustees. (R. pp. 620-623).

Faculty Manual and Board Bylaws

The Faculty Manual states that the Ad Hoc Faculty Hearing Committee (the committee responsible for approving a recommendation for termination) of a tenured faculty member with cause, "will conduct a fair and impartial hearing of all the evidence." (R. pp. 624-705).

Next, the Faculty Member is then afforded the right to appeal her termination before the Faculty and Staff Appeals Committee. (§ 6.2.6) (R. p. 664). That provision states that the Committee "will hear the appeal" and will "after due deliberation, with or without the benefit of further hearings, issues its recommendation to the President. (§ 6.2.6(a)) (R. p. 664). The President, according to the Faculty Manual, must then "review the recommendation" and give the tenured faculty member notice of her "final decision." (§ 6.2.6(b)) (R. p. 664).

Section 6.2.6 does not define the hearing's procedure, but § 7.2 defines hearing procedures for lower-level faculty grievances to include the right of the Faculty Committee to "hear the charge, receive facts and evidence, and entertain arguments from the parties or representatives." (§ 7.2(5))

(R. p. 669). Those hearing procedures permit a faculty member to be represented by counsel and to "present evidence and cross examine all witnesses." (§ 7.2(6)) (R. p. 669).

The Pre-Amendment Bylaws for the Benedict College Board of Trustees said that Board members are to be elected from "April to April, unless the official connection as faculty or student is [severed] prior to the expiration of the term." (R. pp. 706-717); (compare R. pp. 718-731). The bylaws give each Board member an equal vote in person or via proxy. (Art. I, § 5) (R. p. 709). The bylaws provide that "[n]otice of the time and place of [] meetings shall be mailed to each member of the Board by the Secretary at least one month in advance of the selected date of the meeting." (Art. II, § 3) (R. p. 710). The Pre-Amendment bylaws provide for "one [board member] elected annually by the faculty." (Art. I, § 4) (R. p. 709).

STANDARD OF REVIEW

"When reviewing the grant of a summary judgment motion, this court applies the same standard of review as the circuit court under Rule 56, SCRCP." *Pringle v. SLR, Inc*. 382 S.C. 397, 403, 675 S.E.2d 783, 786 (Ct. App. 2009) (citing *Cowburn v. Leventis,* 366 S.C. 20, 30, 619 S.E.2d 437, 443 (Ct. App. 2005). "Rule 56(c) of the South Carolina Rules of Civil Procedure provides that the moving party is entitled to summary judgment 'if the [evidence before the court] show[s] 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.'" *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299, (2023).

ARGUMENT

The Circuit Court decided questions of material fact disregarded favorable evidence to Professor Rogers, and to misapplied key precedent.[6] The foregoing errors warrant reversal.

I. THE CIRCUIT COURT IMPROPERLY DECIDED QUESTIONS OF FACT ON ROGERS' BREACH OF CONTRACT CLAIM WHEN IT CONSTRUED AMBIGUOUS PROVISIONS OF THE FACULTY MANUAL AND FOUND THAT NO BREACH OF THE MANUAL OCCURRED.

Professor Rogers' breach of contract claim, as it pertains to the Faculty Manual primarily rests on the premise that the hearing and grievance procedures, she was afforded were not adequate compared to the relevant requirements in the Faculty Manual (R. pp 624-705).

The Circuit Court concluded that §§ 6.2.4, 6.2.5, and 6.2.6 were not ambiguous and were not breached by the College as a matter of law. In reaching this conclusion, the Circuit Court overlooked patent ambiguity to construe the contract therefore improperly deciding questions of fact for the jury.

Professor Rogers was employed by a private institution of higher education, Benedict College, and was a tenured professor in its criminal justice department (R. p. 513). The South Carolina Supreme Court has held that "when an academic institution grants tenure to one of its professors, the institution promises long-term job security to the professor that differs from the employment-at-will status of non-tenured faculty." *Crenshaw v. Erskine Coll.*, 432 S.C. 1, 14, 850 S.E.2d 1, 7 (2020). In essence, this allows the professor to challenge their termination if it does not comply with relevant portions of their Faculty Manual.

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[6] Namely, *Crenshaw v. Erskine Coll.*, 432 S.C. 1, 14, 850 S.E.2d 1, 7 (2020) (Regarding the contractual enforceability of Faculty Manuals in the tenure setting); *Williams v. Riedman*, 339 S.C. 251, 266-67, 529 S.E.2d 28, 36 (Ct. App. 2000) et al. (Conflicting evidence of breach creates a fact issue); *Paradis v. CCSD*, 433 S.C. 562, 574-75, 861 S.E.2d 774, 781 (2021) (Overruling *Todd* rule).

This case, like *Crenshaw*, "is an ordinary breach of contract case in which the terms of the contract are set forth in The College Faculty Manual." *Crenshaw v. Erskine Coll.*, 432 S.C. 1, 850 S.E.2d 1 (2020). Therefore, when terminating Professor Rogers, and subsequently hearing her grievance challenging her termination, the College had an obligation to adhere to the relevant procedures it had established in its Faculty Manual.

A. Construing ambiguous contractual provisions is the jury's role.

In this case, the Circuit Court found that "there is no genuine issue of material fact suggesting that Benedict College breached any provision of the faculty manual regarding [Professor Rogers'] termination in 2019." (*See* R. p. 17). The Circuit Court overlooked ambiguities within the contract, including the absence of defining information about how Faculty and Staff Appeals Committee hearing was supposed to work.

"A contract is ambiguous when its terms are reasonably susceptible of more than one interpretation." *S. Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 81, 562 S.E.2d 482, 484 (Ct. App. 2002) (citing *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 493 S.E.2d 875 (Ct. App. 1997)).

This Faculty Manual was unilaterally drafted by the College, and therefore any ambiguities within the Faculty Manual should have been read against the College. S. *Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 84, 562 S.E.2d 482, 486 (Ct. App. 2002), aff'd as modified, 356 S.C. 444, 590 S.E.2d 27 (2003) ("It is well settled that ambiguities arising within a contract must be construed against the drafter.").

"Written contracts are to be construed by the Court *unless* the 'contract is ambiguous.'" *Crenshaw v. Erskine Coll.*, 432 S.C. 1, 26, 850 S.E.2d 1, 14 (2020) (emphasis original) (quoting

Cafe Associs., Ltd v. Gerngross, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991)). In cases involving ambiguities, contract interpretation is a jury question.

In *McMillan Pazan Smith, LLC v. Mattison*, an employment case involving a dispute over a severance agreement, the Court of Appeals held that summary judgment was improper because the "severance agreement [was] ambiguous." *McMillan Pazdan Smith, LLC v. Mattison*, 444 S.C. 316, 324, 906 S.E.2d 612, 616 (Ct. App. 2024). That case involved an agreement whose language was unclear. *McMillan Pazdan Smith, LLC v. Mattison*, 444 S.C. 316, 324, 906 S.E.2d 612, 616 (Ct. App. 2024). A key section of the agreement at issue could reasonably be read and interpreted in multiple ways, and the "parties [involved in that case] advocat[ed] for different readings" of the section's language. *McMillan Pazdan Smith, LLC v. Mattison*, 444 S.C. 316, 324, 906 S.E.2d 612, 616 (Ct. App. 2024). Because of this lack of clarity, summary judgment was improper.

Here, the relevant section to the procedure afforded to Professor Rogers of the Faculty Manual is § 6.2.6. That section provides that, after a faculty member initiates a grievance procedure challenging their termination, the Faculty and Staff Appeals Committee "will hear the appeal" and will then "after due deliberation, with or without the benefit of further hearings, issue its recommendation to the [college's] President." (R. pp. 624-705). The Faculty Manual further stipulates that the President must then "review the recommendation" and then provide the tenured faculty member notice of their "final decision." (R. pp. 624-705). While this section may be unambiguous as to the sequence of events that must occur, it *does not* define what the procedure of the committee hearing must be.

However, another section does define hearing procedures for lower faculty grievances. (R. pp. 624-705). Section 7.2 states that a faculty member will be able to be present at the hearing, have the assistance of counsel, and may "present evidence and cross-examine all witnesses." (*Id.*).

The Faculty Manual is ambiguous as to the hearing procedures afforded to a terminated tenured Faculty Member. Professor Rogers' suggested interpretation that the process would be at least as protective as the process for a lower-level grievance is reasonable. A jury question exists on how to interpret and apply § 6.2.6 of the Faculty Manual.

B. The existence of a breach is also a jury question.

Jury questions also exist as to whether the College breached the Faculty Manual by, (1) President Artis failing to transmit notice of the College's final decision to Professor Rogers as required by § 6.2.6(b), (2) by terminating her based on her pedagogical approach in violation of § 4.2.1 (academic freedom), and (3) by terminating Professor Rogers without cause as defined under § 6.2.4 (1).

Where "[t]he evidence of breach is conflicting", "the jury should make this determination." *Williams v. Riedman*, 339 S.C. 251, 266-67, 529 S.E.2d 28, 36 (Ct. App. 2000) (citing *Small v. Springs Industries, Inc*., 292 S.C. 481, 483-84, 357 S.E.2d 452, 454 (1987)

In *Williams v. Riedman*, an employment case involving an employee handbook, this Court found that a directed verdict was properly denied on a breach of contract claim brought by an employee where "evidence [was] conflicting." *Williams v. Riedman*, 339 S.C. 251, 266-67, 529 S.E.2d 28, 36 (Ct. App. 2000). There was a question in that case over whether the immediate termination of the employee, rather than adherence to the employer's progressive discipline policy, constituted a breach of the employment manual. *Williams v. Riedman*, 339 S.C. 251, 260-61, 529 S.E.2d 28, 33 (Ct. App. 2000). The Court of Appeals held that it was up to the jury to decide whether a breach occurred. (*Id*. at 266).

There is conflicting evidence over whether the faculty manual was breached in this case. Professor Rogers presented ample evidence sufficient to demonstrate that her faculty manual was breached in the following ways:

1. Professor Rogers was terminated without cause as defined by § 6.2.4 and as required by § 4.1.2.
2. Professor Rogers was terminated partially based on her decisions regarding the delivery of classroom instruction, in violation of § 4.2.1's provision of "full" academic "freedom" with respect to classroom instruction.
3. The Ad Hoc Committee did not properly "conduct a fair impartial hearing of all of the evidence," as required by § 6.2.5(4).
4. The Faculty and Staff Appeals Committee did not "hear the appeal" in order to perform "due deliberation" within a reasonable rendering of § 6.2.6 wherein a tenured faculty member up for termination would presumably be afforded at least the same level of hearing rights as a Faculty Member asserting a run of the mill grievance under § 7.2 to include: right to counsel, right to present evidence, and the right to cross examine witnesses.
5. The President did not transmit notice of the College's final decision to Professor Rogers as required by § 6.2.6(b).

The question of breach on a conflicted record is for the jury; therefore, it was improper for the Circuit Court to grant summary judgment on Professor Rogers' breach of contract claim with respect to the Faculty Manual.

II. THE CIRCUIT COURT SHOULD NOT HAVE DECIDED THAT ROGERS' ANNUAL CONTRACT WAS NOT BREACHED WHERE THE SOLE QUESTION TO BE ANSWERED WAS A JURY QUESTION ON THE EXISTENCE OF JUST CAUSE.

Professor Rogers' annual contract concurrently and independently defined her employment relationship with the College. Professor Rogers' breach of contract claim on her annual contract is based on her termination before the end of that contract term.

Under South Carolina Law, definite term contracts that do not specify a means of early termination can only be terminated early for cause. *Shivers v. John H. Harland Co.*, 310 S.C. 217, 220, 423 S.E.2d 105, 107 (1992) ("A person hired under an employment contract for a definite term may not be discharged before the completion of the term without just cause.").

There is a genuine question as to whether there was "cause" sufficient to terminate that employment contract. The evidence raises genuine fact questions on the breach of Rogers' annual contract. Including (1) how a jury should consider the University's cited cause relating to Jordan Rice Woodruff's September 2019 statements in light of their full context, and (2) how the College could cite to occurrences predating the signing of the 2019-2020 contract to support Rogers' termination.

"Ordinarily, the question of whether there has been a good and sufficient cause for the discharge of an employee is a jury issue." *Berry v. Goodyear Tire & Rubber Co*., 270 S.C. 489, 492, 242 S.E.2d 551, 553 (1978).

The Circuit Court should not have granted summary judgment on Rogers' claim for breach of the annual employment contract.

III. THERE IS SUFFICIENT RECORD EVIDENCE TO CREATE A JURY QUESTION ON OUTSIDER LIABILITY FOR ROGERS' TORTIOUS INTERFERENCE WITH CONTRACT CLAIM.

Professor Rogers asserts a claim for tortious interference with contractual relations *against Witty and Artis*.[7]

The Circuit Court first erred by finding that Artis and Witty were immune from liability based on a fact finding that they acted within the course and scope of their employment. (See R. pp. 32). Professor Rogers argues Witty and Artis were acting outside the course and scope of their employment with Benedict College. (See R. pp. 65-88).

Outsider liability is the legal theory that allows individual employees of a company to be held liable for tortious interference with a co-worker's contract when they act outside the course

[7] The Circuit Court appeared confused on this claim finding Rogers could not state a claim for tortious interference with contractual relations against Benedict College—which she did not do (See R. pp. 65-88)

and scope of their employment. The South Carolina Supreme Court has specifically approved the concept of outsider liability in relation to claims of tortious interference, having held that "as a matter of law, a manager of a limited liability company can wrongfully interfere with his company's contracts and be held individually liable for his acts." *Dutch Fork Dev. Grp. II, LLC v. SEL Properties, LLC*, 406 S.C. 596, 606, 753 S.E.2d 840, 845 (2012). Further, "an agent may be liable for tortious interference, just as if the agent were an outside third party, if the allegedly interfering acts were conducted outside the scope of the agent's authority." *Dutch Fork Dev. Group II, LLC v. Sel Props., LLC*, 406 S.C. 596, 605, 753 S.E.2d 840, 844 (2012) (quoting *CGB Occupational Therapy, Inc. v. RHA Health Servs., Inc.*, 357 F.3d 375, 385 (3d Cir. 2004); *Kia v. Imaging Scis. Int'l, Inc.*, 735 F. Supp. 2d 256, 268 (E.D. Pa. 2010). "[I]f the agent's sole purpose is one that is not for the benefit of the corporation, the agent is not acting within the scope of employment and may be liable." *Boers v. Payline Sys., Inc.*, 141 Or. App. 238, 243, 918 P.2d 432, 435 (1996).

Here, there is record evidence upon which a reasonable jury could find Artis and Witty acted outside the course and scope of their employment, including: (1) Artis' personal animus for Rogers (R. p. 586, lines 17-25-p. 587, lines 1-4); (R. pp. 596-598 ¶¶ 5, 10-11); (2) Witty's previous attempt to terminate Rogers; (R. pp. 215-216); (3) the suspicious timing of Rogers' termination prior to the September 19, 2019 Board Meeting; and (4) the seemingly intentional disregard for several provisions in the Faculty Manual with respect to Professor Rogers' termination and appeal proceedings.[8]

[8] The Circuit Court also erred by asserting that Professor Rogers' claim for tortious interference with contractual relations failed because her breach of contract claims fail. (See R. p. 31). As explained above, the Circuit Court's conclusions on the breach of contract claims are error.

IV. THE COURT IMPROPERLY RESOLVED FACT QUESTION ON ROGERS' CONSPIRACY CLAIM AND ITS DECISION ON "ADDITIONAL ACTS" IS INCONSISTENT WITH *PARADIS V. CCSD*.

The Circuit Court erred in granting summary judgment on Professor Rogers' civil conspiracy claim.

A. As stated with respect to tortious interference with contract, there is sufficient evidence to give rise to a jury question on outsider liability.

As with tortious interference, "the evidence in the record creates more than one reasonable inference as to whether the [Respondents Artis, Witty, and Johnson] acted outside the scope of their employment." *Pridgen v. Ward*, 391 S.C. 238, 245, 705 S.E.2d 58, 62 (Ct. App. 2010). Therefore, they could be held liable for civil conspiracy. Where "the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment." *Crittenden v. Thompson-Walker Co., Inc.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App. 1986). With respect to Professor Rogers' civil conspiracy claim, evidence of personal animus and disregard of the College's policies and bylaws indicates a potential basis for imposing outsider liability on the conspiracy claim.

B. The case law requiring pleading additional acts in furtherance of a conspiracy is not good law.

In *Paradis v. CCSD*, the South Carolina Supreme Court overruled previous precedent that required the pleading of "special damages" in civil conspiracy cases, and clarified that 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, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." *Paradis v. CCSD*, 433 S.C. 562, 574-75, 861 S.E.2d 774, 780 (2021).

In *Paradis*, the Court overruled the *Todd* rule which overstated secondary authority to impose additional pleading requirements on civil conspiracy claims. *Paradis v. Charleston Cty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021) *discussing*, *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 287, 278 S.E.2d 607, 608 (1981)("The essential principle *Todd* intended to address was the need to plead an overt act in furtherance of the agreement, not special damages."). The issue of "acts in furtherance" was not before the Court in *Paradis*; however, the development of this pleading/proof requirement came from the same misstatement of the law as special damages. There is no reference to acts in furtherance of a conspiracy being a requirement within the elemental restatement of the tort of civil conspiracy contained within *Paradis*.

There is evidence of acts in furtherance of the conspiracy alleged. Requiring specialized proof of "additional" acts in furtherance is not consistent with current civil conspiracy law.

C. There is sufficient evidence on Rogers' conspiracy claim to overcome summary judgment.

Finally, the Circuit Court erred by concluding that Professor Rogers failed to produce admissible evidence and satisfy the requirements of her civil conspiracy claim. (See R. p. 36). The requisite elements of civil conspiracy, as defined by the Supreme Court in *Paradis*, are "(1) the combination or agreement of two or more persons, (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, and (4) damages proximately resulting to the plaintiff." *Paradis v. CCSD*, 433 S.C. 562, 574-75,861 S.E.2d 774, 780 (2021). Professor Rogers presented evidence to establish each of these elements that was overlooked by the Circuit Court.

The record contains evidence which shows, if not suggests, that the individually-named respondents worked together to remove Professor Rogers based on personal animus and in order

to obviate her election to serve as a Faculty Representative on the College's Board of Trustees. The record suggests that this conduct was unlawful or accomplished by unlawful means amounting to: (1) tortiously interference with Professor Rogers' contractual relationship with the College and (2) improper process. *Id*.

This dense record in this case gives rise to determinative questions of fact underlying Rogers conspiracy, tortious interference, and breach of contract claims.

In granting summary judgment, the Circuit Court overlooked favorable evidence to Professor Rogers, viewed record evidence and inferences in favor of the Respondents, and misapplied critical precedent.

CONCLUSION

Appellant Abigail Rogers therefore respectfully asks this Honorable Court to Reverse the holding of the Circuit Court on Summary Judgment and Remand this case to proceed to trial on the merits.

Respectfully Submitted,

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