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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court Of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2026-000337

James Earl Lovorn, III,Appellant,

v.

National Collegiate Athletic Association.....Respondent.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
COUNTER STATEMENT OF THE FACTS	3
STANDARD OF REVIEW	8
ARGUMENT.....	9
I. The Trial Court Properly Evaluated the Appellant’s Application for a Temporary Injunction by Considering the Equitable Defense of Laches as Part of the Evaluation of the Likelihood of Success Element.	9
A. The trial court properly considered the application of the defense of Laches.....	12
B. The fact that an Answer had not been filed asserting the affirmative defense of Laches does not prohibit the court’s consideration of the equitable defense of Laches.....	13
II. The Trial Court Properly Evaluated the Plaintiff’s Claim for Temporary Injunction.....	14
CONCLUSION	16

TABLE OF AUTHORITIES

Cases

<i>AJG Holdings, L.L.C. v. Dunn</i> , 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009)	8
<i>Anderson v. South Carolina Dept. of Highways and Pub. Transp.</i> , 322 S.C. 417, 420, 472 S.E.2d 253, 255 (1996)	10
<i>Atl. Coast Builders and Contractors, LLC v. Lewis</i> , 398 S.C. 323, 328, 730 S.E.2d 282, 285 (2012)	10
<i>Atwood Agency v. Black</i> , 374 S.C. 68, 646 S.E.2d 882 (2007)	8
<i>Billups v. City of Charleston</i> , 194 F.Supp.3d 452, 460 (D.S.C. July 1, 2016)	11
<i>Bruce v. South Carolina High School Leage</i> , 258 S.C. 546, 189 S.E.2d 817 (1972)	11
<i>Brzovic v. NCAA</i> , No. 2:25-cv-02885-DCN, 2025 WL 1370758, at *3 (D.S.C. May 11, 2025) ..	12
<i>Cf. Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal</i> , 546 U.S. 418, 428-29, 126 S. Ct. 1211, 163 L.Ed.2 1017 (2006)	13
<i>Curtis v. State</i> , 345 S.C. 557, 577, 549 S.E.2d 591, 601 (2001)	11, 14
<i>Gantt v. Clemson Agr. Coll. of S.C.</i> , 208 F.Supp. 416, 418 (W.D.S.C. Sept. 6, 1962)	12
<i>Gardner v. Panama R.R. Co.</i> , 342 US, 30-31 (1951)	13
<i>Gilley v. Gilley</i> , 327 S.C. 8, 488 S.E.2d 310 (1997)	8
<i>LeFurgy v. Long Cove Club Owner’s Assoc., Inc.</i> , 313 S.C. 555, 558, 443 S.E.2d 577, 578 (Ct. App. 1994)	10
<i>Lyles v. Williams</i> , 96 S.C. 290, 80 S.E. 470 (1913)	8
<i>Mark v. Edens</i> , 306 S.C. 433, 435-36, 412 S.E.2d 431, 433 (Ct. App. 1991)	12
<i>Pashby v. Delia</i> , 709 F.3d 307, 319 (4th Cir. 2013)	11
<i>Plyler v. Burns</i> , 373 S.C. 637, 648, 647 S.E.2d 188, 194 (2007)	13
<i>Poynter Invs., Inc., v. Century Builders of Piedmont, Inc.</i> , 387 S.C. 583, 587-88, 694 S.E.2d 15, 17 (2010)	11, 14

<i>Robins Island Preservation Fund, Inc. v. Southold Dev. Corp.</i> , 959 F.2d 409, 423 (2nd Cir. 1992)	13
<i>Santos v. Harris Investment Holdings, LLC</i> , 439 S.C. 214, 221, 886 S.E.2d 483, 486-87 (Ct. App. 2023)	16
<i>Thornton v. Alford</i> , 274 S.C. 1, 260 S.E.2d 179 (1979)	11, 15
<i>Wetzel v. Edwards</i> , 635 F.2d 283, 286 (4th Cir. 1980).....	11

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Randolph R. Lowell, Esq. and The Honorable Robert L. Riebold, SOUTH CAROLINA EQUITY: A PRACTITIONER’S GUIDE (2d ed. 2022).....	15

STATEMENT OF ISSUES ON APPEAL

I. Did the trial court properly evaluate and apply the doctrine of laches as part of the analysis of the likelihood of success on the merits?

II. Did the trial court properly review the likelihood of success on the merits in deciding the Appellant's equitable action for an injunction?

STATEMENT OF THE CASE

Appellant James Earl Lovorn, III (“Appellant”) filed this action against Respondent, National Collegiate Athletic Association (hereinafter “Respondent” or “NCAA”) on December 8, 2025. (Summons and Complaint, R. at __). Appellant’s Verified Complaint stated a single “Equitable Cause of Action” for “Arbitrariness – Mistake.” That same day, Appellant filed a Motion for Temporary Injunction and, the following day, served the NCAA with his Verified Complaint and Motion. (Motion for Temporary Injunction, R. at __).

On December 17, 2025, Appellant filed an Amended Verified Complaint again alleging a single equitable cause of action (Amended Complaint, R. at __), and, the following day, he filed a Second Motion for Temporary Injunction. (Motion for Temporary Injunction, R. at __). The NCAA filed its opposition to the Appellant’s Motion for Temporary Injunction on December 22, 2025 (Memo in Opposition, R. at __), and on December 23, 2025, a hearing was held before the Honorable Frank Addy.

On December 30, 2025, the trial court issued an order denying the Motion for Temporary Injunction finding Appellant had not meaningfully rebutted that the NCAA’s decision was “without mistakes” or arbitrariness, and hence Appellant was unlikely to succeed on the merits. (December 30 Order, R. at __). Additionally, the trial court concluded that the doctrine of laches applied, which served as an additional reason Appellant was unlikely to succeed on the merits. The court ruled the action was barred by the doctrine of laches and dismissed the case. On January 8, 2026, Appellant moved the trial court to reconsider the December 30, 2025, order (Motion to Reconsider, R. at __), and on January 20, 2026, the NCAA filed its Memorandum in Opposition to the Motion to Reconsider. (Memo in Opposition, R. at __). Later that day on January 20, 2026, the trial court denied Appellant’s Motion to Reconsider and this appeal followed. (January 20 Order, R. at __).

COUNTER STATEMENT OF THE FACTS

I. The NCAA and its Eligibility Rules

The NCAA is a voluntary, self-governing association of approximately 1,100 member schools. Declaration of Jerry Vaughn (Vaughn Decl., R. at ___). NCAA member schools have adopted eligibility rules to ensure fair competition and enhance the product of collegiate sports. *Id.* These rules are designed to allow member schools to maintain a balance between academics and athletics for college athletes, to ensure that new student-athletes have the opportunity to experience collegiate sports, and to ensure that college sporting events continue to attract fans. *Id.*

The 2022-23 NCAA Division I Manual¹ memorializes the “Five-Year Rule” in Bylaws 12.8 and 12.8.1. Those Bylaws limit student-athletes to four seasons of competition within a five-year period of eligibility that begins up their initial full-time enrollment at a collegiate institution. (Ex. to Vaughn Decl., R. at ___). Legislated exceptions to the Five-Year Rule allow NCAA member schools, like Presbyterian College and Newberry College, to seek waivers on behalf of student-athletes whose circumstances satisfy certain conditions required to obtain a fifth season of competition. Pertinent here is the waiver under Bylaw 12.8.6. (“Season-of-Competition Waiver-Competition While Eligible”) (Ex., R. at ___), which states that a student-athlete “may be granted an additional season of competition by the Committee on Student-Athlete Reinstatement in a case in which the student-athlete participated in a limited amount of competition while eligible due to

¹ Appellant’s Amended Complaint and Motion for Temporary Injunction generally cited to NCAA Division I Bylaw 12.6.6, which tracks the language of that Bylaw in the 2025-26 version of the Division I Manual. Because Appellant challenged a waiver decision related to the 2022-23 season, however, the relevant Bylaw for this Court’s consideration is Bylaw 12.8.6 from the **2022-23** NCAA Division I Manual, which has been submitted contemporaneously herewith as Exhibit C to Jerry Vaughn’s Declaration. (R. at ___). Notwithstanding, the language of the current Bylaw 12.6.6 and former Bylaw 12.8.6 are identical.

a coach's documented misunderstanding of the legislation or other extenuating circumstances.” *Id.* Such waiver may only be granted if, *inter alia*, the student-athlete competed in thirty percent or fewer of the contests in that season, and all of the student-athlete's participation took place during the first half of the season. *See id.*, Bylaw 12.8.6.2.1.

II. Appellant's Eligibility Has Expired

Appellant began his academic and athletic career, and his eligibility clock thus began to run, at Presbyterian College (a Division I member school) in the Fall of 2021. (Am. Compl., ¶ 11, R. at __). He competed on the men's basketball team at Presbyterian during the 2021-22 and 2022-23 seasons.

Appellant alleged that he contracted COVID in the Fall of 2021, and as a result, participated sparingly during the 2021-22 season. *Id.* Appellant further alleged that in May of 2022, after the conclusion of the 2021-22 season, his Godparents and Grandfather were tragically killed in a vehicle accident, which left him emotionally and mentally depleted. (Am. Compl., R. at __). In his next season at Presbyterian College (2022-23), Appellant competed in 38% of the institution's contests. *Id.*, ¶ 17. Presbyterian did not submit a season-of-competition waiver (or any other waiver request) for Appellant for either the 2021-22 or 2022-23 season.

Appellant transferred to Newberry College (a Division II member school) in the Fall of 2023 and played regularly for Newberry's men's basketball team during the 2023-24 and 2024-25 seasons, with the 2024-25 season ending in March of 2025. At any point during the 2023-24 or 2024-25 seasons, Newberry could have submitted a season-of-competition waiver on Appellant's behalf but elected not to do so.

On April 24, 2025, nearly two years after Appellant's 2022-23 season, Newberry submitted a Season-of-Competition Waiver request, seeking relief for Appellant's participation during the

2022-23 season, presumably so that he can play basketball at Newberry during the 2025-26 season. Under NCAA policies and procedures, season-of-competition waivers are reviewed pursuant to the legislation of the division and year in which the competition occurred. See § 10c NCAA Divisions I, II, and III Committees on Student Athlete Reinstatement (**Exhibit 1**). Accordingly, Newberry's request was properly reviewed under Bylaw 12.8.6 Season of Competition Waiver – Competition While Eligible, per the 2022-23 Bylaws.

Under Division I Bylaw 12.8.6, a season-of-competition waiver based on extenuating circumstances is available only where the student-athlete both demonstrates qualifying circumstances and satisfies the participation limits set forth in Bylaw 12.8.6.2.1. Those limits require that the student-athlete not compete in more than three (3) contests or dates of competition, or 30 percent of the maximum number of contests for the seasons, whichever is greater, and that competition occur before the first contest of the second half of the playing season.

Based upon the waiver submitted by Newberry, and the accompanying documentation submitted therein, the waiver application was denied by the NCAA on September 3, 2025. The waiver was denied because Appellant failed to satisfy two of the criteria for relief: he exceeded the 30% competition limit during the 2022-23 season, and he competed in three contests during the second half of the season. (General Information, R. at ___ ; Case Summary, R. at ___).

At the injunction hearing, Appellant attempted to reframe his participation by emphasizing “minutes played” during the 2022-23 season, but the governing legislation does not permit such an approach. The Division I membership has collectively adopted objective criteria to govern eligibility determinations, including the use of contests or dates of competition, not minutes played, as the exclusive measure for applying the 30 percent limitation under Bylaw 12.8.6. Applying that objective standard, Appellant clearly exceeded the permissible participation threshold. And,

irrespective of minutes played, he also clearly competed in contests in the second half of the playing season, which is disqualifying for a waiver under Bylaw 12.8.6. Although an NCAA appeal process is available to member schools within 30 days after a waiver denial, Newberry did not appeal the NCAA's denial of the waiver. Instead, on December 8, 2025 (96 days after the NCAA's denial of the waiver) Appellant filed his lawsuit seeking emergency relief.

III. The Proceedings Below

After Appellant filed his Amended Complaint and Amended Motion for Temporary Injunction, the NCAA replied in opposition to the Injunction. (Memo in Opposition, R. at ____). When it did so on December 22, 2025, no Answer was yet due to the Plaintiff's Complaint. In fact, the Answer to the Amended Complaint would not have been due until January 8, 2026. However, in its written opposition to the Appellant's Motion for Temporary Injunction, the NCAA asserted affirmative reasons and defenses as to why the Appellant's Motion and Complaint failed to demonstrate a likelihood of success on the merits.

On December 30, 2025, the trial court issued its Order denying the Appellant's Motion for Temporary Injunction. (December 30, R. at ____). The Order focused principally on the inability of Appellant to establish a likelihood of success on the merits. In doing so, the court found two deficiencies in the Appellant's claims as set forth in his lawsuit and reiterated in his Motion for Injunction. First, the court correctly noted that under the applicable NCAA bylaws, Appellant had participated in more the 30% of the contests in the playing season and, as a result, the NCAA "made its decision clearly without mistake or arbitrariness, and the Plaintiff is unlikely to succeed on the merits." Appellant does not challenge this finding in his appeal.

The trial court, sitting as a court of equity, additionally found that the doctrine of laches similarly served to demonstrate Appellant's inability to succeed on the merits—and that laches

barred Appellant's claim. The trial court held the Appellant had "not met the requirements for a TRO\Preliminary Injunction, and the action is also barred by the Doctrine of Laches."

In his Motion to Reconsider filed on January 8, 2026, Appellant raised three grounds. (Motion to Reconsider, R. at ____). Two of those grounds having to do with the NCAA Season-of-Competition Waiver are not the subject of this appeal and have therefore been waived. Accordingly, Appellant's only appeals whether the trial court properly considered the NCAA's laches defense in finding no likelihood of success on the merits, and its subsequent dismissal of his case on the same grounds.

STANDARD OF REVIEW

The decision to grant or deny injunctive relief is discretionary, and therefore, a reviewing court will not disturb the grant or denial of an injunction by the trial court absent an abuse of discretion demonstrating that the order is clearly erroneous. *Lyles v. Williams*, 96 S.C. 290, 80 S.E. 470 (1913); *see also Atwood Agency v. Black*, 374 S.C. 68, 646 S.E.2d 882 (2007); *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (1997); *AJG Holdings, L.L.C. v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009).

ARGUMENT

As an initial matter, Appellant only raises the issues associated with the equitable doctrine of laches and the dismissal of the action before this court. Accordingly, the following holding of the trial court's Order is uncontested:

From the clear language of the NCAA bylaws, Plaintiff's participation during his Freshman season bars him from receiving a Hardship Waiver. Plaintiff's contention that playing for only 90 minutes the entire season factors into the calculation – is without merit. Accordingly, the NCAA made its decision clearly without mistake or arbitrariness, and the Plaintiff is unlikely to succeed on the merits.

(December 30, R. at __). Because Appellant does not seek to disturb that holding of no likelihood of success on the merits on appeal, it remains an unchallenged free-standing ground upon which this court can conclude the denial of the Motion for Temporary Injunction was proper. Under South Carolina's Two-Issue Rule, where a trial court's decision is based on two (or more) grounds, and the appellant does not appeal the decision on all grounds, the reason for decision not appealed, right or wrong, becomes the law of the case.

As to the court's application of the doctrine of laches to find no likelihood of success on the merits, it is of no consequence that the defense had not been raised in an answer which was not yet due at the time of the hearing. Irrespective of whether a responsive pleading has been filed, trial courts may evaluate the veracity of potential affirmative defenses when analyzing a temporary injunction movant's likelihood of success on the merits.

I. This Court Should Decline to Address Whether the Trial Court Properly Considered the NCAA's Laches Defense Because, By Failing to Appeal Whether the NCAA Properly Applied the Applicable Waiver Rule, Appellant Cannot Obtain Vacatur or Reversal of the Court's Order Denying Injunctive Relief.

“Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will

become the law of the case.” *Atl. Coast Builders and Contractors, LLC v. Lewis*, 398 S.C. 323, 328, 730 S.E.2d 282, 285 (2012) (internal quotation marks omitted) (quoting *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900 (2010)). Under the rule, an appellate court “will find it unnecessary to address all the grounds appealed where one requires affirmance.” *Anderson v. South Carolina Dept. of Highways and Pub. Transp.*, 322 S.C. 417, 420, 472 S.E.2d 253, 255 (1996). Where an appellate issue “is not preserved” because the appellant fails to appeal all grounds for the trial court’s decision, then courts of appeal “should not reach it.” *Atl. Coast Builders and Contracts, LLC*, 398 S.C. at 329.

Here, Appellant did not appeal one of two bases for the Court’s order denying his request for a preliminary injunction: he did not demonstrate a likelihood of success on the merits because his participation in the 2022-23 season precluded his ability to obtain the waiver sought by his institution on his behalf. Appellant did not appeal this basis for the trial court’s ruling. Accordingly, under the two-issue rule, this Court should not entertain whether the trial court erred by considering how the doctrine of laches impacted Appellant’s likelihood of success on the merits. Irrespective of the Court’s ruling on that issue, the trial court’s injunction Order must be affirmed on the unappealed ground.

II. The Trial Court Properly Evaluated the Appellant’s Application for a Temporary Injunction by Considering the Equitable Defense of Laches as Part of the Evaluation of the Likelihood of Success Element.

Rule 65 of the South Carolina Rules of Civil Procedure controls the issuance of a Temporary Injunction. While the courts have the power to issue injunctive relief, this remedy is extreme and should be applied cautiously. *See LeFurgy v. Long Cove Club Owner’s Assoc., Inc.*, 313 S.C. 555, 558, 443 S.E.2d 577, 578 (Ct. App. 1994). To obtain a temporary injunction, the movant must show “that without such relief it will suffer irreparable harm, that it has a likelihood

of success on the merits, and there is no adequate remedy of law.” *Poynter Invs., Inc., v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 587-88, 694 S.E.2d 15, 17 (2010). Among these factors, likelihood of success on the merits weighs most heavily in the preliminary injunctive analysis. C.J.S. Injunctions, §55.

Before granting an injunction under Rule 65, there must be a pending case stating a valid cause of action. *See Thornton v. Alford*, 274 S.C. 1, 260 S.E.2d 179 (1979). Injunctive relief cannot be granted if a Plaintiff has no right to recover. *See Bruce v. South Carolina High School Leage*, 258 S.C. 546, 189 S.E.2d 817 (1972). In determining whether a temporary injunction should issue, a trial considers the merits of the case “to the extent necessary to determine whether a temporary injunction should issue.” *Curtis v. State*, 345 S.C. 557, 577, 549 S.E.2d 591, 601 (2001).

In the case before the court, Appellant sought a mandatory injunction that would change the status quo by declaring him eligible to compete when the bylaws rendered him ineligible. That is, the Court would issue an injunction allowing Appellant to play when he was previously ineligible. “Preliminary injunctions may be categorized as either prohibitory or mandatory.” *Billups v. City of Charleston*, 194 F.Supp.3d 452, 460 (D.S.C. July 1, 2016). “Prohibitory preliminary injunctions aim to maintain the status quo and prevent irreparable harm while a lawsuit remains pending.” *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013). “Mandatory preliminary injunctions do not preserve the status quo and normally should be granted only in those circumstances where the exigencies of the situation demands such relief.” *Wetzel v. Edwards*, 635 F.2d 283, 286 (4th Cir. 1980). The U.S. Court of Appeals for the Fourth Circuit court has defined the status quo as the “last uncontested status between the parties which preceded the controversy.” *Pashby*, 709 F.3d at 320. “A mandatory injunction, especially at the preliminary stage of proceedings, should not be granted except in rare instances in which the facts and law are clearly

in favor of the moving party.” *Gantt v. Clemson Agr. Coll. of S.C.*, 208 F.Supp. 416, 418 (W.D.S.C. Sept. 6, 1962). An injunction that permits an ineligible student-athlete to participate in collegiate sports is a mandatory injunction. *See Brzovic v. NCAA*, No. 2:25-cv-02885-DCN, 2025 WL 1370758, at *3 (D.S.C. May 11, 2025) (“Here, Brzovic is asking the court to prevent the NCAA from enforcing [] the Challenged Rules. Preventing the NCAA from enforcing rules currently in effect would alter the status quo, and the court, therefore, finds that Brzovic seeks a mandatory injunction.” (internal citation omitted)).

A. The trial court properly considered the application of Laches.

“Under the doctrine of laches, if a party, knowing his rights, does not reasonably assert them, but by unreasonable delay suffer his adversary to incur expenses ... then equity will ordinarily refuse to enforce those rights, especially if an injunction is asked. *Mark v. Edens*, 306 S.C. 433, 435-36, 412 S.E.2d 431, 433 (Ct. App. 1991). It is well settled that laches is an equitable defense that will bar injunctive relief where a Plaintiff unreasonably delays communicating an action. *See e.g.*, 19 FED. PROC. L. ED. § 47:23.

Here, Appellant chose not to bring this lawsuit before the 2025-26 Newberry College basketball season started. Before this action was filed on December 8, 2025, Appellant had multiple opportunities over the preceding two and a half years during which to seek relief. The first opportunity to seek the waiver came at the end of Presbyterian College’s 2022-23 season. A waiver could have been sought then, or a lawsuit filed (of course, that would not have cured the fatal flaw of Plaintiff’s participation that season which Appellant has chosen not to appeal). Once Appellant transferred to Newberry College, a waiver could have been filed in the Fall of 2023; no such waiver was filed. A waiver could have been filed at the end of Newberry College’s 2023-24

season; no such waiver was filed. The same is true for the remainder of 2024. Of course, a lawsuit could have been filed at any time.

Thirty-Three (33) months passed between the end of Presbyterian College's 2022-23 season which ended in March of 2023 and December of 2025 when Appellant filed suit. Newberry College's 2025-26 Basketball Season began November 14, 2025 and as of the date of the December 23, 2025, hearing, it had played 10 games. Further, the NCAA's denial of Appellant's waiver on September 3, 2025, was never appealed and then over 3 months passed before the instant lawsuit was filed and that is at best inconsistent with the Appellant's claims for emergency relief as evidence of substantial delay.

B. The fact that an Answer had not been filed asserting the affirmative defense of Laches does not prohibit the court's consideration of the equitable defense of Laches.

Appellant argues that laches is an affirmative defense which was not plead in an Answer and as a result the trial court could not consider laches in its likelihood of success analysis. As a threshold matter, courts may consider affirmative defenses at the injunction stage in assessing whether a plaintiff has a likelihood of success on the merits. *Cf. Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S. 418, 428-29, 126 S. Ct. 1211, 163 L.Ed.2 1017 (2006). Under South Carolina law, a trial court may consider an unpleaded affirmative defense "where the defense is timely raised to the trial court without resulting in unfair surprise to the opposing party." *Plyler v. Burns*, 373 S.C. 637, 648, 647 S.E.2d 188, 194 (2007). Determination of whether laches bars a party from equitable relief is entirely within the discretion of the trial court. *Robins Island Preservation Fund, Inc. v. Southold Dev. Corp.*, 959 F.2d 409, 423 (2nd Cir. 1992). "The existence of Laches is a question primarily addressed at the discretion of the trial court." *Gardner v. Panama R.R. Co.*, 342 US, 30-31 (1951). The fact that an answer had not been filed because it did not need

to be filed before the hearing on the motion should not void the consideration of laches as a defense. Because laches was timely raised (before the deadline to file a responsive pleading), and given the consideration of laches is within the discretion of the trial court, Judge Addy was well within his bounds to consider it as an additional ground to deny the Appellant's motion for a temporary injunction, remembering that the factor of likelihood of success on the merits weighs most heavily in the preliminary injunction analysis. *See* 43A C.J.S. INJUNCTIONS §55.

Appellant argues that because laches is an affirmative defense under 8(c), SCRCP, it need be pled in an answer to be considered. Setting aside the fact that no answer was due at the time of the December 23, 2025, hearing, the Appellant's argument fails. Laches is not the only defense listed in 8(c); another, for example, is the statute of limitations. Under Appellant's logic, a motion to dismiss a complaint as being beyond the statute of limitations would fail if it was not pled in an answer. However, a motion to dismiss tolls the time to answer. Here, the NCAA answer was not yet due, but laches was fully briefed prior to the December 23rd hearing, putting Appellant on notice of the defense. Hence, it was properly considered by the court.

III. The Trial Court Properly Evaluated the Plaintiff's Claim for Temporary Injunction.

It is well settled that, in deciding a Motion for Temporary Injunction, a Court may consider the merits of a case with regard to the movant's likelihood of success in the underlying case. *Curtis v. State*, 345 S.C. 557, 577, 549 S.E.2d 591, 601 (2001); *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010). Respondent also acknowledges there is a body of South Carolina case law in support of the concept that a Court's dismissal of a case at the temporary injunction motion stage may be premature. However, the core claims of Appellant's Complaint and Motion for Temporary Injunction, the hearing, and the Court's Order may distinguish this case from that body of law.

The Appellant's amended verified complaint pleaded a single equitable cause of action styled "Arbitrariness/Mistake". After the three paragraphs comprising that cause of action, he prayed for temporary and permanent injunctive relief against the NCAA to make him eligible to play for the 2025-26 basketball season. Hence, the focus of the December 23, 2025 hearing and the resulting dismissal was directed solely on the complaint and relief that Appellant sought. Ultimately, the trial court ruled, and Appellant did not appeal, the finding "the NCAA made its decision without mistake or arbitrariness." As argued below, the amended complaint and its single cause of action is not one of the twenty (20) equitable causes of action recognized in South Carolina. *See* Randolph R. Lowell and The Honorable Robert L. Riebold, *SOUTH CAROLINA EQUITY: A PRACTITIONER'S GUIDE* (2d ed. 2022).

As previously discussed, the NCAA had not yet filed an Answer, opting instead to await the outcome of Appellant's Motion for Temporary Injunction. In opposition to the Motion for Temporary Injunction, the NCAA reiterated well settled authority that in order for a Rule 65, SCRPC, injunction to be granted, there must be a pending case in which a valid cause of action is stated. *Thornton vs. Alford*, 274 S.C. 1, 260 S.E.2d 179 (1979). Accordingly, where Appellant's Amended Complaint stated no valid cause of action, it is ultimately subject to dismissal pursuant to Rule 12(b)(6), SCRPC. Further, the relief sought by Appellant's motion was the same relief sought by his complaint—the right to compete in the 2025-26 basketball season. In advance of the hearing on the same, the parties briefed the issues and submitted materials which make up the record on appeal before this Court.

The trial court granted significant latitude to both parties at the December 23rd Motion hearing, including allowing Appellant's reference to evidence not yet in the record. For example, the trial court allowed Appellant to testify in person on the record, without objection from the

NCAA. Similarly, counsel for the Appellant made reference to additional provisions of the NCAA By-Laws and Division I Manual, which had not been entered into evidence. As a result, the hearing was conducted in much the same way as a 12(b)(6) Motion which, per that Rule, may be treated as a Rule 56 motion for summary Judgment when “. . . matters outside the pleadings are presented to and not excluded by the Court.” Rule 12(b)(6), SCRCF. The NCAA does not presume to know the trial Court’s thinking or analysis in this regard. However, even if the trial Court in its discretion elects to amend its Order by not dismissing the case outright and restoring it to the docket to proceed as any other action would, dismissal is inevitable. The entire premise for Appellant’s Amended Complaint does not warrant relief. *See Santos v. Harris Investment Holdings, LLC*, 439 S.C. 214, 221, 886 S.E.2d 483, 486-87 (Ct. App. 2023). Even if restored and allowed to proceed in the absence of a Temporary Injunction, the case will be dismissed shortly thereafter pursuant to a subsequent Motion to Dismiss by the NCAA a) per Rule 12(b)(6) for failure to state a cause of action, b) as a matter of law on the defense of laches, and/or c) as moot under Rule 12(b)(1) given the season for which Plaintiff sought eligibility has concluded.

CONCLUSION

The Appellant had his day in the trial court, which ruled that the NCAA’s decision was without mistake or arbitrariness and that he could not succeed on the merits. This appeal takes no issue with that finding. Laches was properly raised by the NCAA, which the trial court found applied and hence was an additional ground to find no likelihood of success on the merits. Because the merits and the ultimate relief sought were identical, the trial court committed no error and its decision should be affirmed.

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Respectfully submitted,

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