

FILED-CLERK OF COURT
 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE GREENVILLE CO. S.C. THIRTEENTH JUDICIAL CIRCUIT
 PAUL B. WICKENS

2015 MAY 29 PM 4 19 C.A. No. 2014-CP-23-1463

The Legacy Charter School,)
 Plaintiff,)
 v.)
 National Collegiate Athletic Association,)
 Defendant.)
 _____)

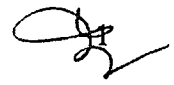
ORDER

This matter came before the Court on Plaintiff and Defendant’s Motions for Summary Judgment. Both parties assert that they are entitled to summary judgment on all claims. A hearing on both motions was held on May 5, 2015. For the following reasons, the Court hereby GRANTS summary judgment in favor of Defendant National Collegiate Athletic Association (“NCAA”) on all causes of action and DENIES Plaintiff’s Motion for Summary Judgment.

Background

Plaintiff The Legacy Charter School (“Legacy”) is a charter school operating in Greenville, South Carolina. In furtherance of its mission, Legacy places a strong emphasis on student participation in athletic programs, and has chosen not to join the state’s high school athletic association, the South Carolina High School League. Legacy submitted an application in 2012 to the NCAA’s Eligibility Center for an initial eligibility review of its academic curriculum.

Defendant NCAA is an unincorporated organization comprised of member colleges, universities, conferences, and associations. The activities of the NCAA are governed by its Constitution and Bylaws. NCAA member institutions have adopted minimum academic standards which prospective student athletes, typically high school students, must meet in order to be eligible to join a member institution’s athletic team. In order to evaluate the incoming



athletes' academic standards, the NCAA established a High School Review Process and an Eligibility Center. The Eligibility Center is also governed by the NCAA Bylaws. Several years ago, the Eligibility Center began reviewing high schools requesting blanket approval of their student athletes' NCAA eligibility. This blanket review was instituted to lessen the burden of reviewing individual applicants. However, the Eligibility Center may review potential student athletes on an individual basis in spite of the high school review process.

Legacy initiated this action against the NCAA due to its placement on "extended evaluation status" by the NCAA's Eligibility Center. Legacy asserts that this action by the NCAA, through its Eligibility Center, has hindered its ability to recruit potential student athletes and consequently caused injury to the school. The parties agree that there are no factual disputes in this matter.

Standard of Review

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Rule 56, SCRCP. The moving party bears the burden of identifying those portions of the pleadings, depositions, answers to interrogatories, any admissions on file, together with the affidavits, if any, which show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Bravis v. Dunbar, 316 S.C. 263, 449 S.E.2d 495 (Ct. App. 1994). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. Law v. S.C. Dep't of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). After a motion for summary judgment is made, the non-moving party must point to specific facts showing that there is a genuine issue for trial, rather than resting on the assertions of its pleadings. Id. The non-moving party is only required



to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Hutchinson v. Liberty Life Ins. Co., 393 S.C. 19, 24, 709 S.E.2d 130, 133 (Ct. App. 2011).

Discussion

I. NCAA's Motion for Summary Judgment as to Breach of Contract.

Generally an individual may not enforce a contract unless he is a party to it. Trancik v. USAA Ins. Co., 354 S.C. 549, 533, 581 S.E.2d 858, 861 (Ct. App. 2003). However, where a contract was made for the benefit of a third party, that third party may enforce it if he demonstrates that the contract was intended to convey a direct benefit upon him. Touchberry v. Florence, 295 S.C. 47, 376 S.E.2d 149 (1988); Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 445, 494 S.E.2d 827, 834 (Ct. App. 1997). A third party may not enforce a contract where it only creates an incidental or consequential benefit to the third party. Goode, 295 S.C. at 445, 494 S.E.2d at 834.

Legacy is not a member of the NCAA, and thus, it seeks to enforce the NCAA Constitution and Bylaws as a third party beneficiary. Since Legacy is not a member of the NCAA, it may only bring a claim for breach of contract as a third party beneficiary. However, Legacy has identified no language within the NCAA Constitution or Bylaws which indicates that the NCAA and its members intended to confer a direct benefit upon Legacy or any other high school through the creation of the High School Review Process or the Eligibility Center. The committees and processes in place are designed to evaluate the academic credentials of student athletes who are attempting to participate in athletics at a NCAA member institution, and thus are designed to benefit the member institutions themselves. The high school review process was also implemented to lessen the burden on the Eligibility Center.



While Legacy and other similarly-situated high schools might derive an incidental benefit from the Eligibility Center's process, Legacy is not intended to be a direct beneficiary of the NCAA's High School Review Process or the Eligibility Center. Therefore the NCAA is entitled to judgment as a matter of law.

II. NCAA's Motion for Summary Judgment as to Intentional Interference with Prospective Economic Relations.

To recover on a cause of action for intentional interference with prospective economic relations, a plaintiff must demonstrate three elements. Eldeco, Inc. v. Charleston Cnty. Sch. Dist., 372 S.C. 470, 480, 642 S.E.2d 726, 731, (2007). First, the plaintiff must prove that the defendant intentionally interfered with the plaintiff's potential contractual relations. Id. Second, the plaintiff must prove that the defendant's interference was for an improper purpose or by improper methods. Id. Finally, the plaintiff must prove that he was injured as a result of the defendant's interference. Id. Damages in a claim for tortious interference must be more than general allegations of lost profits or contracts—they must be specific and concrete in order to be recovered. United Educ. Distrib., LLC v. Educ. Testing Serv., 350 S.C. 7, 14–18, 564 S.E.2d 324, 328–30 (Ct. App. 2002).

The Court finds that Legacy failed to provide any evidence of these elements, and thus the NCAA is entitled to judgment as a matter of law. The processes established and followed by the NCAA in its evaluation of the eligibility of potential student athletes do not constitute intentional interference with Legacy's operation as a school. Furthermore, there is no evidence that the NCAA's evaluation process was conducted for an improper purpose or using improper methods. Finally, Legacy has put forth no evidence of specific or concrete damages as a result of any action by the NCAA. Therefore, Legacy's second cause of action fails as a matter of law, and the NCAA is entitled to summary judgment.



III. Legacy's Motion for Summary Judgment.

A. Breach of Contract and Intentional Interference with Prospective Economic Relations.

Based on the foregoing discussion, Legacy is not entitled to judgment as a matter of law on its causes of action for breach of contract and intentional interference with prospective economic relations. Thus, Legacy's Motion for Summary Judgment is denied.

B. Injunctive Relief.


A party seeking injunctive relief must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. Denman v. City of Columbia, 387 S.C. 131, 140-41, 691 S.E.2d 465, 470 (2010). Injunctions are drastic remedies which may be granted in the Court's discretion. Scratch Golf Co. v. Dunes W. Residential Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004).

In this case, Legacy has not demonstrated irreparable harm or a likelihood of success on the merits of its claims. Additionally, in light of the rulings discussed above, there are no further pending issues which would merit the issuance of an injunction. To the extent that Legacy is seeking injunctive relief, its motion is denied.

Conclusion

Therefore, in accordance with the foregoing discussion, the Court GRANTS summary judgment in favor of Defendant NCAA on all causes of action and DENIES Plaintiff Legacy Charter's Motion for Summary Judgment.

May 21, 2015



Letitia H. Verdin
Circuit Court Judge



EXHIBIT B

Reconsideration Order

THE LEGACY CHARTER SCHOOL

2015 JUL 14 PM 4 25

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court on Plaintiff's Motion for Reconsideration filed June 10, 2015. Upon review, Plaintiff's Motion is respectfully DENIED.

ORDER INFORMATION

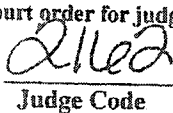
This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


 Circuit Court Judge


 Judge Code

7/13/15
 Date

For Clerk of Court Office Use Only

This judgment was entered on the 14th day of July, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 14th day of July, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Troy A Tessier
James C Esszuter
Nicholas V Godfrey
ATTORNEY(S) FOR THE PLAINTIFF(S)
Meliah Bowers Jefferson

John Edward Cullino
William C Odle
Corbyn W Jones
ATTORNEY(S) FOR THE DEFENDANT(S)
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Lined area for additional information regarding the decision.