

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson Jr., Circuit Court Judge

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S.C. SUPREME COURT

Appellate Case No.: 2016-001337
Published Opinion No. 5583 (S.C. Ct. App. Filed Aug. 1, 2018)

Leisel Paradis Petitioner

v.

Charleston County School District, James Island Charter High School, Robert Bohnstengel, and
Stephanie Spann, in their individual capacities, ... Respondents

JOINT APPENDIX

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In the Court of Appeals

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JAN 03 2017

SC Court of Appeals

Leisel Paradis Appellant,

v.

Charleston County School District, James Island Charter High School, Robert Bohnstengel, and
Stephanie Spann, in their individual capacities, ... Respondent.

RECORD ON APPEAL

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Court of Common Pleas

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Leisel Paradis Appellant,

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RECORD ON APPEAL

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CR

57



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NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Plntff's mot to reconsider is denied

CASE NO: 2015CP1005093

Leisel Paradis VS Charleston County School District , defendant, et al

This judgment was entered on the 19th day of May, 2016, and notice mailed first class on Monday, May 23, 2016, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

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MAY 26 2016

**J. LEWIS CROMER
& ASSOCIATES, L.L.C.**

CR

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-5093

Leisel Paradis

Charleston County School District, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
OR
☐ 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.
- ☐ **ACTION DISMISSED (CHECK REASON).** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON).** ☐ Rule 40(j), SCRCP; ☐ 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: Plaintiff's Motion to Reconsider filed on April 29th, 2016 is respectfully denied without a rehearing

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC 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)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

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.

[Signature]
Circuit Court Judge

2117
Judge Code

5/18/16
Date

FILED
2016 APR 15 PM 12:52
JULIE J. ARMSTRONG
CLERK OF COURT
2

shortly thereafter, she was notified by Defendant Bohnstengel that she was being placed on SAFE-T/ADEPT evaluation for the following school year in accordance with their prior meeting. Plaintiff was shocked by this notification because she had not previously met with Defendant Bohnstengel, and she had met all of her goals of her GBE (Goals Based Evaluation) for the 2012-13 school year.

Despite her efforts to reverse the decision of Defendant Bohnstengel, she was subject to evaluation for the 2013-14 school year. Defendant Bohnstengel was one of three evaluators for Plaintiff; however, he was terminated before Plaintiff's evaluation was complete. He was then replaced by Maureen Jessup for the remainder of the evaluation period. Plaintiff failed the evaluation for the 2013-14 school year and was again placed on evaluation for the 2014-15 school year.



Plaintiff was concerned that she would not be treated fairly in the second evaluation because Defendant Spann, who had been on the prior evaluation team, would again serve as one of her three evaluators. According to Plaintiff, during the second year of evaluation, Defendant Spann changed the requirements of her evaluation, causing Plaintiff to be confused. Plaintiff met with her mentor, Charity Scruggs, almost daily. Ms. Scruggs noted that Plaintiff was under strain, but that she was doing all she could to please the evaluators. Despite her efforts, Plaintiff failed the evaluation during the second year, scoring lower at the end of the year than she had at the beginning. All of Plaintiff's peers and colleagues were aware that she was being evaluated and saw the physical and emotional toll it took on Plaintiff. Plaintiff was terminated because she failed the evaluation for two consecutive years. Plaintiff, thereafter, exhausted her administrative remedies.¹

¹ The administrative remedies available to a teacher are governed by the South Carolina Teacher Dismissal Act. Specifically, a teacher who has been terminated exhausts her administrative remedies when she requests a hearing

Plaintiff's Complaint alleges a cause of action for defamation of character against Defendants CCSD and JCHS, as well as a cause of action against Defendants Bohnstengel and Spann for civil conspiracy.

CONCLUSIONS OF LAW

A. Standard of Review.

A Rule 12(b)(6) motion to dismiss should be granted when the pleadings, construed in the light most favorable to the non-moving party, fail to allege sufficient facts to state a cause of action. Rule 12(b)(6), SCRCP; Haskell Co. v. Morgan, 274 S.C. 261, 262 S.E.2d 737 (1980). As stated in DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293 (1981):

gen A [motion to dismiss] admits the facts well-pleaded in the complaint but does not admit the inferences drawn by the plaintiff from such facts. In short, a [motion to dismiss] a complaint does not admit conclusions of law pleaded therein.

274 S.E.2d at 296; Carolina Winds Owners' Ass'n v. Joe Harden Builder, Inc., 297 S.C. 74, 374 S.E.2d 897, 899 (Ct. App. 1988) ("A motion under Rule 12(b)(6) . . . admits the well pleaded facts in the complaint, but it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law."). An allegation of a mere legal conclusion is insufficient to state a cause of action. Jones v. Gilstrap, 288 S.C. 525, 343 S.E.2d 646 (1986); Russell v. City of Columbia, 301 S.C. 117, 390 S.E.2d 463 (Ct. App. 1989) ("The court must take well pleaded factual allegations as true. However, allegations which are conclusory rather than factual should be disregarded.")

B. Plaintiff's Defamation Claim Is Dismissed as a Matter of Law.

Plaintiff alleges that she was slandered by allegedly false, oral and written statements

before the District Board of Trustees and receives a determination from the Board as to "whether the evidence showed good and just cause" for the dismissal. S.C. Code Ann. § 59-25-470. Furthermore, the "teacher has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present any and all defenses to the charges." Id. § 59-25-470 (emphasis added).

made against her by “agents and servants of Defendant District and Defendant JICHHS acting in the course and scope of their employment.” Plaintiff’s allegations fail as a matter of law and are subject to dismissal because: (1) Defendants CCSD and JICHHS are entitled to sovereign immunity; (2) Plaintiff’s claim for defamation is barred by the applicable statute of limitations; and (3) Plaintiff’s claim fails to state facts sufficient to constitute a cause of action for defamation.

 1. **Defendants CCSD and JICHHS are entitled to a dismissal of Plaintiff’s claim for defamation because it is subject to sovereign immunity.**

Plaintiff’s claim for defamation is subject to the South Carolina Tort Claims Act (SCTCA), which provides the sole remedy available to a plaintiff for civil wrongs alleged to have been committed by a government agency. Hawkins v. City of Greenville, 358 S.C. 280, 292, 594 S.E.2d 557, 563 (Ct. App. 2004). CCSD and JICHHS are each a governmental entity subject to the protections of the SCTCA. S.C. Code Ann. § 15-78-30(d). Although the SCTCA waived absolute immunity for torts committed by government actors, it limited liability under certain circumstances. S.C. Code Ann. § 15-78-40 (Supp. 2003). Specifically, in adopting the SCTCA, the General Assembly continued the grant of immunity to the political subdivisions of the State and their employees “while acting within the scope of official duty” S.C. Code Ann. § 15-78-20(b). When examining a provision which potentially limits the liability of a government agency, the Court should liberally construe the portion of the Act in favor of the government defendant. Hawkins, 358 S.C. at 292, 594 S.E.2d at 563. School officials are not liable for allegedly defamatory conduct performed in the discharge of their official duties. De Levay v. Richmond Cty. Sch. Bd., 284 F.2d 340, 340 (4th Cir. 1960). Where a government official is entitled to immunity, the defense is available, regardless of his rank or his motives, and

even when his conduct is within the "outer perimeter of his line of duty" Green v. Cauthen, 379 F. Supp. 361, 374 (D.S.C. 1974).

Plaintiff's claim for defamation appears to be based on the allegations that "[a]ll of the Plaintiff's peers and colleagues knew she was undergoing the evaluation process" and that "[b]y virtue of placing and holding Plaintiff on the evaluation process for two years – which was widely known at JICHHS – Plaintiff's credibility as a teacher was greatly diminished." Compl., ¶¶ 21, 28. Thus, the gravamen of Plaintiff's cause of action is that CCSD and JICHHS defamed her when they placed her on formal evaluation for two consecutive school years.

gm However, CCSD and JICHHS are entitled to absolute immunity for placing Plaintiff on formal evaluation because assessing teacher competence is a statutory duty of all school districts in South Carolina. See S.C. Code Ann. § 59-26-40 ("A teacher employed under a continuing contract must be evaluated on a continuous basis. At the discretion of the local district and based on an individual teacher's needs and past performance, the evaluation may be formal or informal"). By placing Plaintiff on formal evaluation, CCSD and JICHHS were each clearly acting within the scope of its official, statutorily-mandated duties, such that there is no liability under the SCTCA. Even Plaintiff acknowledges in her Complaint that the allegedly false statements and actions were made by agents of the CCSD and JICHHS "while acting within the course and scope of their employment." Compl., ¶¶ 29, 31.

2. Plaintiff's claim for defamation is barred by the applicable statute of limitations and is hereby dismissed.

A cause of action for defamation must be brought within two years of the time the claim arose. Jones v. City of Folly Beach, 326 S.C. 360, 368, 483 S.E.2d 770, 774 (Ct. App. 1997) (citing S.C. Code Ann. § 15-3-550 (Supp. 1995)). Plaintiff alleges Defendants CCSD and JICHHS defamed her "[b]y virtue of placing and holding Plaintiff on the evaluation process for two years

...” Compl., ¶ 28 (emphasis added). According to her Complaint, Plaintiff was notified that she was being placed on formal evaluation shortly after her meeting with Richard Glickman in March of 2013, and she was, in fact, subject to evaluation beginning with the 2013-14 school year. Compl., ¶¶ 11, 12, 14. Thus, Plaintiff’s cause of action for defamation arose as early as March of 2013, or as late as August 2013, when the 2013-14 school year began. However, Plaintiff did not commence this litigation until September 22, 2015, after the expiration of the two-year statute of limitations for defamation claims. Therefore, her claim for defamation is time-barred.

3. Because Plaintiff does not state a claim for defamation, her cause of action for defamation is dismissed pursuant to SCRCP 12(b)(6).

Even if CCSD and JCHS were subject to liability, Plaintiff’s claim for defamation is still subject to dismissal against both Defendants because her complaint fails to state facts sufficient to constitute a cause of action for defamation. See Rule 12(b)(6), SCRCP.

To establish a cause of action for defamation, the Plaintiff must show: “(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” Erickson v. Jones St. Publishers, L.L.C., 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006).

In Pagano v. Martin, 397 F.2d 620 (4th Cir. 1968), the Fourth Circuit Court of Appeals addressed a similar situation, in which the alleged defamatory statements occurred in connection with a report that was issued pursuant to an employer’s authorized duties. In that case, the alleged libel appeared in a performance evaluation report issued by the defendants, who were the plaintiff’s superior officers on the USS Robert A. Owens, a naval destroyer ship. Pagano, 397 F.2d at 620. The court acknowledged that the evaluation report “downgraded [the plaintiff]

sharply and recommended he not be re-enlisted in the future.” Id. In affirming the district court’s dismissal of the libel claim on the defendants’ motion for summary judgment, the Court of Appeals noted: “The report authorized by the Bureau of Naval Personnel Manual, was made by the defendant officers *as part of their official duties*. With the trial court, we think the suit, as a matter of law, cannot be maintained.” Id. (emphasis added).

Here, the Complaint is devoid of factual allegations that actually support Plaintiff’s contention that there was an unprivileged, defamatory communication made to a third party. The alleged defamatory material is nothing more than a negative evaluation of Plaintiff’s professional performance, and Defendants CCSD and JICHS are not only authorized, but mandated by law, to perform teacher evaluations, some of which, by their very nature, will result in substandard reviews. Furthermore, Plaintiff has failed to identify who actually published or made the alleged defamatory statements, and to whom such statements were made. Without those facts to support Plaintiff’s allegations, her claim must fail.

C. Plaintiff’s Civil Conspiracy Claim Is Hereby Dismissed as a Matter of Law.

Plaintiff’s Complaint alleges that Defendants Bohnstengel and Spann conspired against her and targeted her for an “unwarranted and invasive evaluation,” and that as a result, Plaintiff suffered special damages in the form of “being blacklisted and ostracized from the profession of education.” Compl. ¶¶ 35-36. However, Plaintiff’s claim for civil conspiracy fails as a matter of law and is subject to dismissal because: (1) Plaintiff fails to sufficiently and/or specifically state any special damages beyond those alleged in her other cause(s) of action; and (2) the actions of Defendants Bohnstengel and Spann that form the apparent basis of Plaintiff’s conspiracy claim were all done within the course and scope of their employment, such that no actionable conspiracy exists.

1. **Plaintiff fails to state with specificity the special damages she sustained as a result of Defendants' alleged conspiracy.**

“A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing *special damage* to the plaintiff.” Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 324, 701 S.E.2d 39, 46 (Ct. App. 2010) (quoting McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006) (emphasis added)). Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage. Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822, 831 (Ct. App. 2012). “The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to a common design.” Cricket Cove Ventures, 390 S.C. at 324, 701 S.E.2d at 46. To establish a conspiracy, “evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise.” Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005) (citation omitted).

Rule 9(g) provides that “[w]hen items of special damage are claimed, they shall be specifically stated.” Rule 9(g), SCRCP.

This rule is based upon the distinction between general and special damages. General damages are inferred by the law itself, as they are the immediate, direct, and proximate result of the act complained of. In contrast, special damages are not implied by law because they are the natural, but not the necessary or usual, consequence of the defendant's conduct. Thus, special damages must “be specifically stated” to avoid surprise to the other party.

Benedict Coll. v. Nat'l Credit Sys., Inc., 400 S.C. 538, 548, 735 S.E.2d 518, 523 (Ct. App. 2012) (citations omitted). Where a party alleges the same damages under a conspiracy claim as they do under the other causes of action, such allegations are insufficient to establish special damages. Gordon, 397 S.C. at 136, 723 S.E.2d at 831-32 (Ct. App. 2012); Hackworth v. Greywood at

Hammett, LLC, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009) ("If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed.").

The only mention of special damages in Plaintiff's Complaint, beyond the conclusory statement that she has sustained them generally, is that she has been ostracized or blacklisted from the profession of education and that she incurred legal fees to pursue the claims set forth in her Complaint. Yet, Plaintiff fails to plead any specific facts to support such an assertion, such as an inability to obtain other employment in the education profession. Furthermore, the alleged damages of being blacklisted and ostracized are simply a re-wording of the "injur[y] to her professional reputation" that are the claimed damages under her defamation cause of action. See Compl. ¶¶ 30-32.

gm

Additionally, Plaintiff's claim for costs and attorneys' fees in her Complaint does not constitute special damages related to her civil conspiracy claim. In this instance, Plaintiff is the "plaintiff," not a "defendant," and she "has not demonstrated how these attorney's fees are any different" than the fees "any other litigant incurs." Killian v. City of Abbeville, No. 8:14-1078-TMC, 2015 WL 1011339, *5 (D.S.C. March 6, 2015)(slip copy)(rejecting plaintiff's contention that his attorney's fees and costs constituted special damages in regard to his civil conspiracy claim). See also AJH Holdings, LLC v. Dunn, 392 S.C. 160, 168, 708 S.E.2d 218, 223 (Ct. App. 2011)("Every litigant represented by a lawyer incurs attorney's fees and costs.")

Therefore, Plaintiff's Complaint fails to "specifically state" any special damages beyond those damages alleged under other causes of action, such that her conspiracy claim fails as matter of law.

2. Plaintiff's civil conspiracy claim fails because the conduct alleged of Defendants Bohnstengel and Spann was done in the scope of their employment.

gcn

A corporation or municipal entity can act only through its directors, officers, agents, and employees. See Anvar v. Greenville Hosp. Sys., No. 2007-UP-004, 2007 WL 8324255, at *5 (S.C. Ct. App. Jan. 10, 2007). Thus, where the actions of an entity's agents and employees were all performed while acting within the course and scope of their authority, a conspiracy claim is barred by the intracorporate conspiracy doctrine. See id (citing McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564-65, 626 S.E.2d 884, 886-87 (2006) (holding a civil conspiracy cannot exist in the context of a principal-agent relationship where the individuals are all acting only for the corporation and not for any personal purpose of their own)); see also Cameron v. Church, 253 F. Supp. 2d 611, 623 (S.D.N.Y.2003) (stating "[t]he intracorporate conspiracy doctrine provides that the officers, agents and employees of a single corporate or municipal entity, each acting within the scope of his or her employment, legally are incapable of conspiring together"). "[J]ust as it is not legally possible for an individual to conspire with himself, it is not possible for a single legal entity consisting of the corporation and its agents to conspire with itself." McAndrew v. Lockheed Martin Corp., 206 F.3d 1031, 1036 (11th Cir. 2000).

In Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Ct. App. 2010), the South Carolina Court of Appeals stated:

In McMillan, our Supreme Court limited this "intracorporate conspiracy" doctrine to persons acting within the scope of their employment, 367 S.C. at 564-65, 626 S.E.2d at 887. Other jurisdictions have similarly limited the doctrine. See ePlus Tech., Inc. v. Aboud, 313 F.3d 166, 179 (4th Cir. 2002) ("[T]he intracorporate immunity doctrine does not apply where a corporate 'officer has an independent personal stake in achieving the corporation's illegal objectives.'" (quoting Greenville Pub. Co. v. Daily Reflector, Inc., 496 F.2d 391, 399 (4th Cir. 1974))); McAndrew v. Lockheed Martin Corp., 206 F.3d 1031, 1036 (11th Cir. 2000) ("Simply put, under the doctrine, a corporation cannot conspire with its employees, and its employees, *when acting in the scope of their employment*, cannot conspire among themselves.") (emphasis added); Garza v. City of Omaha, 814 F.2d 553, 556 (8th Cir. 1987) ("While it is true that a corporation cannot conspire with itself, an intracorporate conspiracy may be established where

individual defendants are also named and those defendants act outside the scope of their employment for personal reasons.”).

Cricket Cove Ventures, 390 S.C. at 325-26, 701 S.E.2d at 46-47.

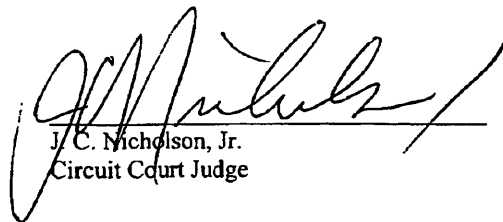
Plaintiff's allegations against Defendants Bohnstengel and Spann all relate to conduct that occurred while they were acting within the course and scope of their employment as administrators at James Island Charter High School. Plaintiff's bald allegations in the Civil Conspiracy section of her Complaint that Defendants “were able to specially inflict their evil agenda upon the Plaintiff and did so *outside of the scope of their own employment*”, Compl. ¶ 35 (emphasis added), are thinly-veiled and disingenuous assertions given the assertion on the preceding page that the exact same conduct and actions were “made against Plaintiff by agents and servants of Defendant District and Defendant JICHHS *acting in the course and scope of their employment*.” Compl. ¶ 29 (emphasis added). At all times relevant to the allegations of the Complaint, the individual Defendants were acting as agents and employees of Defendants CCSD and JICHHS, and Plaintiff fails to allege any facts to support a conclusion to the contrary. Thus, Plaintiff's civil conspiracy cause of action is dismissed.

CONCLUSION

For the foregoing reasons, Plaintiffs claims for defamation and civil conspiracy fail as a matter of law, and Defendants' Amended Motions to Dismiss are granted.

IT IS THEREFORE ORDERED that Plaintiff's Complaint is DISMISSED.

AND IT IS SO ORDERED!


J. C. Nicholson, Jr.
Circuit Court Judge

April 14, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Leisel Paradis,

vs.

Charleston County School District, James Island
Charter High School, Robert Bohnstengel and
Stephanie Spann, in their individual capacities,

Defendants.

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SEP 22 2015

PHILIP W. CROMER
& ASSOCIATES, L.L.C.

THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A NO.: 2015-CP-10-5093

CIVIL ACTION COVERSHEET

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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Label (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☒ Other (699)-Defamation of Character & Civil Conspiracy | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (670) | | |

Submitting Party Signature: Ashley C. Story

Date: September 15, 2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (06/2013)

Page 1 of 2

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-10-_____

Leisel Paradis,

Plaintiff,

v.

Charleston County School District, James
Island Charter High School, Robert
Bohnstengel and Stephanie Spann, in their
individual capacities,

Defendants.

SUMMONS

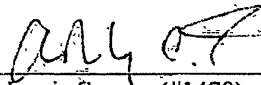
2015 SEP 17 PM 2:20
CLERK OF COURT

FILED

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

J. LEWIS CROMER & ASSOCIATES, L.L.C.

BY: 

J. Lewis Cromer (#1470)
Ashley C. Story (#100578)
1418 Laurel Street, Suite A (29201)
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533
Attorneys for Plaintiff

September 15, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Leisel Paradis,

Plaintiff,

v:

Charleston County School District, James
Island Charter High School, and Robert
Bohnstengel and Stephanie Spann, in their
individual capacities,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-10-_____

COMPLAINT
(Jury Trial Demanded)

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CLERK OF COURT

Plaintiff, Leisel Paradis, complaining of the Defendants Charleston County School District ("District"), James Island Charter High School ("JICHs"), Robert Bohnstengel ("Bohnstengel"), and Stephanie Spann ("Spann") would respectfully show unto the court:

PARTIES AND JURISDICTION

1. Plaintiff is a resident of Charleston County, South Carolina and was employed by Defendant District as an English Teacher at JICHs.
2. Defendant District provides public educational services to student residents within its defined boundaries in Charleston County, South Carolina. JICHs is located within the District.
3. Defendant JICHs provides public educational services to student residents within its defined boundaries in Charleston County, South Carolina.

4. Defendant Bohnstengel is, upon information and belief, a resident of Charleston County and now works in Beaufort. He was the former Principal of JICHHS and supervised Plaintiff for a number of years.

5. Defendant Spann is, upon information and belief, a resident of Charleston County. She is the current Assistant Principal of JICHHS and participated as an evaluator for Plaintiff.

6. The events giving rise to the following causes of action occurred in Charleston County, and jurisdiction is proper.

FACTUAL ALLEGATIONS

7. Plaintiff received positive performance evaluations throughout her employment as an English Teacher at JICHHS. She worked for the District for twenty years and attended JICHHS as a student herself. Plaintiff underwent the Goals Based Evaluation ("GBE") process every year, and successfully met each GBE.

8. During the 2012-2013 school year, Plaintiff suffered a violent and harassing verbal assault from a student in her classroom, who had documented disciplinary issues.

9. Plaintiff reported the same to Spann and Bohnstengel. After the incident, Plaintiff discussed the event with Bohnstengel in more detail and informed him that she desired to file a report with the local police department because of the aggressive and violent nature of the assault. Bohnstengel became angry with Plaintiff, strongly encouraged her not to make the report because it would "lower the JICHHS report card" related to disciplinary reports, place the school on a list of violent schools in the state,

and further told Plaintiff that her report would be useless because she could not call students as witnesses due to their ages.

10. Plaintiff was shocked and upset that she was discouraged from filing a report.

11. Following the incident with the student aforementioned, Plaintiff met with Richard Glickman ("Glickman") – a former JICHS Assistant Principal – in March of 2013, and he signed-off that she successfully accomplished her GBE for the 2012-2013 school year.

12. Shortly thereafter, Plaintiff received notice from Bohnstengel that "per their prior meeting and discussion of performance issues," Plaintiff was being placed on the SAFE-T/ADEPT evaluation ("evaluation") for the 2013-2014 school year, which would consist of Plaintiff being periodically evaluated by three individuals in addition to completing a number of rigorous tasks and assignments. Plaintiff's employment would be contingent on her successful completion of the evaluation.

13. Such news shocked Plaintiff because she never had any meetings with Bohnstengel prior to receiving his letter, and she had just met all of her goals for her GBE with Glickman.¹

14. Plaintiff tried in vain to reverse Bohnstengel's decision, but he was adamant that she would undergo the evaluation. As such, Bohnstengel, Spann, and Kevin Eakes served as Plaintiff's evaluators. Plaintiff's mentor was Tanner Tucker. None of the evaluators had any experience teaching English.

¹ Plaintiff later came to learn that Spann recommended Plaintiff for the evaluation due to the number of disciplinary referrals Plaintiff made. Spann did not recommend every teacher with a similar referral rate for the evaluation process.

15 Before Plaintiff's evaluation was completed, Bohnstengel separated employment from JCHS and the District. Upon information and belief, Bohnstengel was terminated from his employment and subsequently filed a lawsuit against JCHS and the District.

16. Spann continued to evaluate Plaintiff, and Bohnstengel was replaced as JCHS Principal by Richard Gordon ("Gordon"). Maureen Jessup replaced Bohnstengel as Plaintiff's other evaluator for the evaluation. Jessup had no experience teaching English.

17. Plaintiff was evaluated less than 5% of her teaching time, and she was failed at the end of her evaluation period. Because she was failed, if she wanted to continue employment at the District and JCHS, Plaintiff had to undergo the evaluation for a second year during the 2014-2015 school year and agree to a full-time position; formerly, Plaintiff worked part-time.

18. For the second year of the evaluation, Plaintiff's evaluation team was comprised of Gordon, Spann, and Susan Watson-Bell. Plaintiff was concerned that she would not be given a "fair shake" since Spann had previously failed her and was evaluating her performance again. She contacted a District employee relating to this matter and was informed that it was general practice for the entire team to be replaced. Charity Scruggs ("Ms. Scruggs") served as Plaintiff's mentor.

19. As the year and evaluation progressed, Spann periodically changed Plaintiff's evaluation requirements in such a way that totally confused Plaintiff until she had to seek clarity on a variety of assignments and issues. Ms. Scruggs met with Plaintiff almost daily, noticed the strain she was under, but also noted that Plaintiff successfully

employed various teaching strategies in the classroom; she was asking for assistance and doing all that she could to please the evaluation team – all to no avail.

20. Again, Plaintiff – despite all of her hard work, effort, and diligence with Ms. Scruggs – was given a failing grade on the evaluation again. Most surprisingly, Plaintiff's evaluation actually showed that she was scored more positively at the beginning of the second year of the evaluation than at the end even though Plaintiff was utilizing and adopting the suggestions given to her.

21. All of Plaintiff's peers and colleagues knew she was undergoing the evaluation process and witnessed the physical and emotional toll Plaintiff suffered as a result. Plaintiff's peers in the English department, who had experience working with her over a number of years, commented on the two-year evaluation process and speculated that Plaintiff was placed on it due to administration's belief that Plaintiff had classroom management issues, although Plaintiff was not the only teacher who reported discipline to administration.

22. After Plaintiff failed the evaluation for a second year, she was dismissed from her twenty-year career at JCHS. She exhausted her administrative remedies.

**FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANTS DISTRICT AND JCHS
(Defamation of Character)**

23. Plaintiff realleges paragraphs 1-22 herein.

24. Plaintiff is a private figure.

25. Plaintiff was slandered by oral and written statements as well as by actions of Defendant District and Defendant JCHS.

26. These statements and actions made against Plaintiff were made by agents and servants of Defendant District and Defendant JICHS acting in the course and scope of their employment under the circumstances alleged above.

27. These statements and actions are false.

28. These statements and actions, including false accusations that Plaintiff could not effectively teach her students and manage her classroom, injured Plaintiff, and have defamed Plaintiff in her trade, business, and profession. By virtue of placing and holding Plaintiff on the evaluation process for two years – which was widely known at JICHS – Plaintiff's credibility as a teacher was diminished greatly.

29. By the false statements and actions made against Plaintiff by agents and servants of Defendant District and Defendant JICHS acting in the course and scope of their employment, Defendant District and Defendant JICHS defamed Plaintiff, and the defamation was published to Plaintiff's colleagues, students, and possibly others, including parents who previously knew Plaintiff to be a good and hardworking English Teacher.

30. The false statements and actions were not privileged, as there was no duty to furnish the information to the recipients, and they circulated to persons other than Plaintiff and her superiors, injuring her professional reputation.

31. The statements and actions made by the agents and servants of Defendant District and Defendant JICHS acting within the course and scope of their employment, together with the actions that Defendant District and Defendant JICHS took, including the actions that proximately caused Plaintiff's termination, are defamatory *per se*.

32. That such statements and actions were false, known to be false, and given with reckless disregard for the truth, were maliciously made, and have proximately caused Plaintiff's severe and continuing damages including the loss of her job, loss of income, loss of earning capacity, and future income and benefits associated therewith. Further, Plaintiff has sustained embarrassment, humiliation, damage to her reputation, emotional distress, and pain and suffering, which will continue into the foreseeable future. As a result of these actions, Plaintiff lost a considerable amount of sleep and her self-confidence.

FOR A SECOND CAUSE OF ACTION
AGAINST THE DEFENDANTS BOHNSTENGEL AND SPANN
(Civil Conspiracy)

33. Plaintiff realleges the paragraphs above as if set forth herein verbatim, where not inconsistent herewith.

34. The Individual Defendants Bohnstengel and Spann met, conspired, schemed and planned with others to rebuke Plaintiff and to cause her special damages in an evil and personal agenda motivated from a personal dislike of Plaintiff and her valid complaints of discipline issues, which was offensive to the Defendants, who had previously experienced issues with discipline and its negative effect upon JCHS and the District for reporting purposes.

35. Because of the position of the Individual Defendants in JCHS administration, they were able to specially inflict their evil agenda upon the Plaintiff and did so outside the course and scope of their own employment in an intentional and malicious manner, including targeting the Plaintiff for an unwarranted and invasive evaluation.

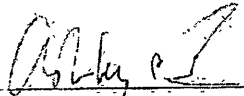
36. Such actions taken by the Defendants and others amount to an unlawful civil conspiracy and approximately cause special damages to the Plaintiff for being blacklisted and ostracized from the profession of education.

37. Plaintiff is further entitled to an award of punitive damages from the Individual Defendants for their intentional, malicious, and evil actions.

WHEREFORE, Plaintiff prays for judgment against the Defendant District and Defendant JICHS for an appropriate amount of compensatory and actual damages, as well. Plaintiff also prays for equitable relief in the form of full back pay and any other relief granted by the court.

FURTHERMORE, Plaintiff prays for judgment against the Individual Defendants Bohnstengel and Spann for an appropriate amount of actual and punitive damages, the latter of which to deter such malicious behavior. Plaintiff also prays for attorneys' fees and costs associated with the civil conspiracy cause of action against the Individual Defendants.

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Attorneys for Plaintiff

September 15, 2015
Columbia, SC

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2015-CP-10-5093

LEISEL PARADIS,	)	
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
	)	MARCH 30, 2016
CHARLESTON COUNTY	)	CHARLESTON, SC
SCHOOL DISTRICT,	)	
	)	
DEFENDANT.	)	

B E F O R E:
HONORABLE J. C. NICHOLSON, JUDGE

A P P E A R A N C E S:

Ashley Story, ESQUIRE
Chelsea Rikard, ESQUIRE
Attorneys for the Plaintiff
Bob J. Conley, ESQUIRE
Rene Dukes, ESQUIRE
Attorneys for the Defendant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

1 (The following proceedings were held
2 March 30, 2016, Charleston County, South Carolina,
3 @ 12:00 p.m.)

4 THE CLERK: Paradis versus Charleston
5 County.

6 THE COURT: Who is representing who?

7 MS. STORY: Your Honor, my name is
8 Ashley Story. I represent the Plaintiff Leisel
9 Paradis. With me is Chelsea Rikard.

10 MR. CONLEY: Good morning or afternoon,
11 Judge. Bob Conley. I represent two of the
12 Defendants in the case, James Island Charter High
13 School and Ms. Spann.

14 MS DUKES: Your Honor, I am Rene Dukes.
15 I am here on behalf of Charleston County School
16 District and the Defendant Robert Bohnstengel.

17 THE COURT: Okay. This was a motion
18 for more definite statement and a motion to
19 dismiss.

20 MS. DUKES: Yes, Your Honor.

21 THE COURT: Which one do you want to
22 hear first?

23 MS. DUKES: Well, I think the request
24 to make a more definite statement is incorporated
25 within the motion to dismiss so I can just argue

1 that part of it.

2 THE COURT: Okay.

3 MS. DUKES: Your Honor, I'm -- I was
4 going to argue to Plaintiff's cause for defamation
5 and Mr. Conley is going take on the civil
6 conspiracy claim.

7 Leisel Paradis failed her performance
8 evaluation for two different years and as a result
9 she was terminated. She first appealed to the
10 James Island Charter High School which was her
11 right and they upheld the decision of the
12 administration. And then she had a second appeal
13 before the Charleston County School District and
14 once again based on the evidence they upheld the
15 decision to terminate her for failing her
16 performance evaluation those two years.

17 She had the right of appeal to the
18 circuit court on that finding; however, instead she
19 brought an action in tort for causes of action for
20 defamation and for civil conspiracy against the
21 school district, against James Island Charter High
22 School and also against the individuals Robert
23 Bohnstengel and Stephanie Spann.

24 Ms. Paradis' defamation claim has
25 failed on several grounds. First and foremost, her

1 -- the district and also the school or governmental
2 agencies, and they're protected by immunity under
3 the South Carolina Tort Claims Act, although that
4 act does allow individuals to bring tort claims
5 against government agencies, it provides immunity
6 for government agencies who are acting within the
7 scope of their duties by performing administrative
8 tasks or by complying with state law.

9 I think it's undisputed that -- and we
10 have cited the statute, I think it's 15-78-60.
11 Under that statute the schools are required to
12 evaluate teachers on an ongoing basis to determine
13 whether their performance meets the standards of
14 the district. And so that's what they did. They
15 had some concerns, they placed her on a formal
16 evaluation and the crux of her defamation claim
17 seems to be --

18 THE COURT: What does she say was I
19 guess slanderous or what did she say was
20 slanderous?

21 MS. DUKES: Well, it's -- her complaint
22 is unclear. This seems to be the basis of her
23 defamation claim, it's paragraph 21 of her
24 complaint. All of Plaintiff's peers and colleagues
25 knew she was undergoing the evaluation process and

1 witnessed the physical and emotional toll Plaintiff
2 suffered as a result. Plaintiff's peers in the
3 English department who had experience working with
4 her over a number of years commented on the
5 two-year evaluation process and speculated that
6 Plaintiff was placed on it due to the
7 administrator's belief that Plaintiff has classroom
8 management issues. That's exactly why she was
9 placed on it.

10 So what she seems to be saying is just
11 by virtue of the fact that she was put on a formal
12 evaluation plan she was defamed. And if that's
13 true, then every time the school district complies
14 with the statutory duty to evaluate teachers it can
15 be subject to a claim for defamation. I just don't
16 think that's the law. I think you are immune from
17 that under the Tort Claims Act, specifically under
18 the waiver of immunity, the administrative action
19 or compliance with state law. I think in both
20 these cases that was what the school district was
21 doing, that was what James Island Charter School
22 was doing and so they were immune from tort
23 liability.

24 The fourth circuit also -- I cited a
25 case specifically that states that school officials

1 are not liable for allegedly defamatory conduct
2 performed in the discharge of their official duties
3 and there's no dispute as I understand from
4 Plaintiff that that's exactly what performance
5 evaluation is.

6 And so we believe that on that ground
7 alone that the cause of action for defamation
8 should be dismissed as against the school district
9 and James Island Charter School. They were the
10 only two parties that she alleged that claim
11 against.

12 THE COURT: Okay.

13 MS. DUKES: In addition to that we have
14 other arguments if you want -- the Court feels that
15 it needs additional.

16 THE COURT: You think that's your
17 strongest argument?

18 MS. DUKES: I do, Your Honor.

19 THE COURT: Let me let her address
20 that. If there are additional arguments I will
21 hear them after she addresses it.

22 MS. RIKARD: Thank you, Your Honor. I
23 appreciate it. Our position is that there are
24 several things that were defamatory in this case,
25 not only the evaluation itself, but also the act of

1 termination due to the results of the evaluation.
2 I think it's important for you to note, Your Honor,
3 that Ms. Paradis pled in the complaint she actually
4 passed evaluation before she was placed on the
5 formal evaluation.

6 And so the events leading up to that,
7 she passed her annual GBE, which is a goals based
8 evaluation, then she was slammed into the formal
9 evaluation that started the defamatory process.
10 She stayed on it for two whole years and during
11 that time her colleagues approached her and they
12 said we don't understand what's going on. We pled
13 in the complaint they believed her to have been a
14 good teacher except that now she's been on this
15 evaluation process and she has got people coming to
16 her.

17 THE COURT: Isn't the school district
18 required to say what's deficient and give her an
19 opportunity to correct it?

20 MS. RIKARD: Yes, sir, they are
21 required.

22 THE COURT: As a time frame that's
23 going to take, is there a time frame?

24 MS. RIKARD: Yes, sir. That's one
25 year.

1 THE COURT: One year.

2 MS. RIKARD: Yes, sir.

3 THE COURT: So why weren't they doing
4 what they were supposed to do?

5 MS. RIKARD: I'm sorry, I don't
6 understand your question.

7 THE COURT: I understood that you are
8 saying because of the delay that was inflammatory.

9 MS. RIKARD: Yes.

10 THE COURT: So -- but the school board
11 is required to have a delay, they have got an
12 evaluation, say you are in deficiency such and
13 such, one through five or whatever and give us some
14 time to correct it and assisted in correcting it;
15 they have up to a year to do that, right?

16 MS. RIKARD: Yes, sir. That's correct.
17 After the first year --

18 THE COURT: So how can the delay be
19 inflammatory?

20 MS. RIKARD: Because after the first
21 year --

22 THE COURT: Or how can that be
23 defamation?

24 MS. RIKARD: Because she originally
25 passed an evaluation. She should have never been

1 placed on it in the first place. She got put on it
2 the second time and there was an actual -- another
3 year after that, a second year after that. She
4 went through this process for a very long period.
5 And, in fact, if the one year holds true, they
6 believe she didn't actually pass the first year,
7 she should have never been placed on the evaluation
8 the second year because she wouldn't have been
9 employed after that time. That's we believe -- I
10 mean it's just a series of events, Your Honor, we
11 believe created defamatory action.

12 And then the termination itself under
13 Tyler v. Mack Stores and Moshtagi v. Citadel, an
14 action -- the action the district took in
15 conjunction with all of these things created the
16 defamatory act which was the termination itself.
17 We cited both of those cases in our brief, Your
18 Honor.

19 THE COURT: Well, I mean they were just
20 going through the process of evaluation and making
21 determination whether she could correct the
22 deficiency or terminate her. So how can that whole
23 process be defamation?

24 MS. RIKARD: Because originally she
25 passed her evaluation and then she got put on the

1 formal evaluation.

2 THE COURT: But so what? Every teacher
3 who passes it, they either pass it or flunk it and
4 they fail it, right? What does that have to do
5 with -- how many years has she taught?

6 MS. RIKARD: She taught for over
7 20 years.

8 THE COURT: So for 19 years she passed
9 it, the 20th year she doesn't. What's that have to
10 do with anything?

11 MS. RIKARD: Well, she wasn't put on a
12 formal evaluation until the 20th year.

13 THE COURT: So what? I mean so what?

14 MS. RIKARD: Because she had passed --
15 the goal based evaluation was --

16 THE COURT: Isn't the evaluation done
17 every year?

18 MS. RIKARD: That evaluation is done
19 every year. The ADEPT/SAFE-T evaluation that she
20 was placed on is a much more rigorous evaluation.
21 Every teacher doesn't go through that evaluation
22 process every single year. The school district has
23 to pick the teachers who are placed on ADETP/SAFE-T
24 evaluation process. And it's the school district's
25 position they placed her on that process because

1 she had turned in so many disciplinary referrals to
2 the administration. But, in fact, during one of
3 the board hearings the administrator who said that
4 happened had also admitted that they placed other
5 -- they didn't place other teachers on the same
6 evaluation for the same reason, teachers who even
7 had more disciplinary referrals than my client did.

8 And so for them to say she had a
9 classroom management issue and that's why we are
10 placing her on this evaluation, when other teachers
11 had the same issues, the same number of referrals
12 and didn't place them on the same evaluation
13 process, that is the defamatory action.

14 THE COURT: Okay. Yes, ma'am.
15 Anything you want to say in rebuttal?

16 MS. DUKES: Well, I just want to point
17 out the goals based evaluation is completely
18 different. If you just say I want to meet this
19 goal for the year and if you meet the goal then you
20 pass the evaluation, really has no relevance to the
21 evaluation process.

22 They gave her a second year just to
23 give her the benefit of the doubt. So I would hope
24 that wouldn't be held against the school and the
25 district because they did that.

1 THE COURT: Okay. Let me hear you on
2 the other grounds.

3 MS. DUKES: Did you mean the other
4 grounds for defamation? Secondly, for the school
5 district I am representing there's -- the statute
6 59-40-190 (C) provides that the school district
7 cannot be liable for any action that occurs at the
8 school in which they sponsor. So that provides the
9 second grounds for at least dismissal of the cause
10 of action against the school district.

11 Third, Your Honor, we allege that it's
12 beyond the statute of limitations. She alleges
13 that she was placed on -- she was notified that she
14 would be placed on formal evaluation in March of
15 2013. The process would have been begun in
16 August 2013. There's a two-year timeline to bring
17 an action. She didn't file this until
18 September 22nd, 2015, and as Mr. Conley pointed out
19 the defamation should be -- it's a concrete act. I
20 don't think you have just an ongoing defamatory
21 conduct. I still have don't my hands around the
22 defamation claim itself. But --

23 THE COURT: I tend to agree with you.
24 But go ahead.

25 MS. DUKES: For those reasons we argue

1 that the statute of limitations --

2 THE COURT: What happened on August
3 the 13th?

4 MS. DUKES: So she was notified she --
5 her complaint suggested that she was notified that
6 she was put on formal evaluation in March of 2013.
7 So what I don't know, is that defamatory? If it is
8 then she is way late. Or was it not until August
9 of 2013 when the actual evaluation process would
10 have begun. Is that the defamatory conduct?

11 THE COURT: Either one she's outside.

12 MS. DUKES: She's too late.

13 THE COURT: Either one. What's special
14 about August the 13th?

15 MS. DUKES: That would have been when
16 the school year resumed. But they're notified the
17 year before, by statute they are required to be
18 notified they are put on the formal evaluation. So
19 she would have been notified the prior year and
20 then the actual --

21 THE COURT: Did she teach the '13-14
22 school year?

23 MS. DUKES: She did. And she was
24 placed on her formal evaluation. But according to
25 -- the act of placing her is as I understand it,

1 just placing her on evaluation was defamatory. So
2 it's kind of hard to nail down, but it would have
3 had to have been one of those two dates.

4 Fourthly, Your Honor, we argue that the
5 defamation claim fails the 12 (b) (6) test. She
6 doesn't say who published what to whom, I mean even
7 in her argument -- she said the teachers became
8 aware. And just because people become aware that
9 you are on formal evaluation there's no
10 publication, there's -- she doesn't even plead what
11 is required to sustain a cause of action for
12 defamation.

13 So for those reasons -- also again we
14 have a fourth circuit case that we have cited that
15 say claims based on potentially defamatory
16 statements contained in a formal evaluation cannot
17 stand as a matter of law.

18 So we believe under 12 (b) (6) the Court
19 should dismiss it. And finally, Your Honor, we
20 added an argument of res judicata. As I explained
21 before, she had two hearings now. She had one
22 before the James Island Charter School Board. She
23 had another hearing before the Charleston County
24 School District Board of Trustees. At no time has
25 she raised a cause of action that I wasn't really a

1 bad teacher, I was -- it was just because I was
2 defamed and they conspired.

3 THE COURT: You don't need to go any
4 further with that argument.

5 MS. DUKES: Then I will sit down.

6 THE COURT: Yes, sir.

7 MR. CONLEY: Thank you, Judge
8 Nicholson. I want to address the civil conspiracy
9 claim against Ms. Spann and Dr. Bohnstengel. I'm
10 going to address three specific things in the
11 context of their civil conspiracy claim which is
12 where I think the focus of the Court's attention
13 needs to be as to that claim for purposes of this
14 pending motion.

15 One sort of goes to the heart of your
16 questioning here earlier about the defamatory claim
17 in and of itself and as the claimed defamatory act
18 here, was it wrong. Was there anything unlawful
19 about it, was there anything wrong about it. The
20 fact of the matter is there is not. The defamatory
21 conduct the Plaintiff is clearly pleading in this
22 complaint is conduct by the school district and by
23 the high school that's required by law in the
24 state.

25 So if you take that premise, Judge, and

1 you look at the case law in South Carolina, I will
2 cite the Court to the Cowburn vs. Leventis where
3 the court talks about part of the civil conspiracy
4 is that two people have to agree upon the
5 prosecution of an unlawful enterprise.

6 THE COURT: Who does she allege were
7 the conspirators?

8 MR. CONLEY: She alleges Dr.
9 Bohnstengel and Ms. Spann who were both at James
10 Island Charter High School when Ms. Paradis was
11 employed there. She claims they as a collected --

12 THE COURT: The principal and who?

13 MR. CONLEY: The principal and
14 essentially I will call her vice principal.

15 THE COURT: The principal and vice
16 principal are the conspirators?

17 MR. CONLEY: Exactly. So she is
18 basically claiming that the two primary
19 administrators at the school have conspired to put
20 her into this formal evaluation process, an
21 evaluation process that is clearly required by
22 statute in the state. So if you look at her
23 conspiracy claim in that context which she is
24 claiming, what Dr. Bohnstengel and Ms. Spann
25 conspired to do was that they conspired to carry

1 out what they were lawfully required to do, which
2 is put her through this formal evaluation process.
3 That alone would bar the civil conspiracy claim and
4 ought to lead to the dismissal of it..

5 Second, when -- although it's not clear
6 from the complaint, it becomes clear when you read
7 the brief Plaintiff submitted in opposition to that
8 motion. That the special damages that Ms. Paradis
9 is claiming here are special damages of the
10 attorney's fees and costs she is incurring in
11 pursuing this lawsuit. And she actually cites to
12 the case --

13 THE COURT: What does she allege is
14 special damages?

15 MR. CONLEY: The special damages are
16 clear. If you look at her brief, the special
17 damages she alleges are the cost and fees she is
18 apparently paying her lawyers to pursue this civil
19 conspiracy claim against Ms. Spann and Dr.
20 Bohnstengel. She tangentially cites to a case
21 known as AJG Holdings vs. Dunn which does not
22 support that proposition.

23 In fact, if you look further, there's a
24 subsequent South Carolina Court of Appeals opinion
25 in Benedict College vs. National Credit Systems and

1 then a subsequent federal district court opinion,
2 Killian vs. City of Abbeville that clearly said a
3 Plaintiff cannot claim as special damages the cost
4 and fees they're paying their own lawyer to pursue
5 a civil conspiracy claim.

6 What those cases stand for, and if you
7 look at them carefully, they stand for the
8 proposition that in those cases there was a
9 Defendant who was then a Plaintiff who had
10 previously spent money defending claims, meaning
11 they had previously spent costs and attorney's fees
12 defending what they believe were unlawful claims
13 brought against them for an unlawful purpose and
14 they subsequently brought a civil conspiracy claim
15 against the prior Plaintiff in another action and
16 claimed that their fees from that prior action were
17 special damages. And the Court said yes, you can
18 pursue those as special damages.

19 But if you read the Killian case and
20 you read the Benedict case, a Plaintiff in a civil
21 conspiracy claim cannot claim their ongoing
22 attorney's fees in pursuing a civil conspiracy
23 claim as special damages. That is not a basis for
24 it and that's the second reason that the civil
25 conspiracy claim should fail.

1 The third reason. The third reason is
2 that in the complaint there's the blunt, bold
3 statement made that Ms. Spann and Dr. Bohnstengel
4 acted outside the course and scope of their
5 employment. That statement is in the four corners
6 of the complaint.

7 The problem is there's nothing in this
8 outside of that bold, blunt statement that
9 indicates they did anything outside the course and
10 scope of their employment. In fact, it's to the
11 contrary. If you read the complaint, there's
12 nothing in there that would even imply they did
13 something outside the course and scope of their
14 employment.

15 By way of example, there's no
16 allegation in there that the two of them met
17 outside of the school building surreptitiously to
18 make plans about what they were going to do with
19 Ms. Paradis. There's not even an allegation they
20 met privately to conspire against her. The
21 allegations in the complaint are simply if you look
22 at them on the face, they have put her through the
23 evaluation process that's lawful and is required.
24 That's not outside the course and scope of their
25 employment.

1 And in that context Ms. Paradis can't
2 stand and pursue a claim just by saying they acted
3 in the course and scope of their employment. She
4 has got to have some indicia of factual allegation
5 in this complaint showing or implying that they did
6 something that was outside the scope and course of
7 their employment at James Island Charter High
8 School.

9 And, Judge, I would ask that you read
10 the complaint. I think you'll conclude there's no
11 factual allegation that either directly or by
12 implication would imply that either one of them
13 acted outside the course and scope of their
14 employment.

15 In fact, it's to the contrary. What
16 they did was within the course and scope of their
17 employment. The final thing I will say about that.

18 If you look at the civil conspiracy and
19 defamation claims in context and collectively, the
20 claims are basically the same. The factual claims
21 are the same. The conduct that's alleged is the
22 same as to both the defamation and civil conspiracy
23 claim. And interestingly, if you look at the
24 defamatory cause of action, within that cause of
25 action Ms. Paradis claims that Ms. Spann and Dr.

1 Bohnstengel were acting within the course and scope
2 of their employment when they defamed her which is
3 the same conduct they claim constituted a civil
4 conspiracy, but was outside the course and scope of
5 their employment.

6 Your Honor, for all of those reasons,
7 the Court should dismiss the civil conspiracy claim
8 against Dr. Bohnstengel and my client Ms. Spann.

9 THE COURT: Thank you very much. Yes,
10 ma'am.

11 MS. RIKARD: All right. So you go back
12 to the defamation and the other couple of arguments
13 that Ms. Dukes made, just to address those, Your
14 Honor. The first one that she brought up in her
15 second set of arguments was South Carolina
16 59-40-190 (c); however, if you go on and read that
17 subsection of the code there is a (d) part which
18 states that all employees of a converted school
19 shall remain the employees of the local school
20 district, a South Carolina public charter school
21 district or the public or independent institution
22 of higher learning sponsor with the same
23 compensation and benefits. We allege in our
24 complaint that Ms. Paradis, my client, she had
25 previously been an employee of Charleston County

1 School District and the school at which she taught
2 was James Island Charter High School converted to a
3 charter high school later on.

4 So the issue of the conversion would be
5 a discoverable issue whether or not she was
6 actually an employee of the school district or the
7 charter high school. That takes cares of that one.

8 There are a couple of dates that you
9 and Ms. Dukes were discussing. She was originally
10 notified that she was placed on the evaluation
11 March of 2013. The evaluation itself didn't start
12 until the fall, August of 2013. However, in the
13 spring of 2014 she was notified that she was being
14 placed on the evaluation for the next school year.
15 So that timeline started over again for the second
16 evaluation period. She wasn't actually terminated
17 or notified that she was not going to be renewed
18 her contract until March of 2015 I believe is the
19 right year.

20 So this was brought within the
21 applicable time limitations. Ms. Dukes also
22 brought up the 12 (b)(6), Your Honor. And I
23 address that in our brief. A couple of things I
24 just want you to know about that. We did say in
25 the complaint that her colleagues did speculate

1 about her ability to perform as a teacher. And we
2 have to be more clear, Your Honor. As part of the
3 issue of the more definite statement we can
4 certainly amend the complaint and do that for you,
5 but that -- there was publication. The fact that
6 she was on the evaluation and her termination was
7 widely known. They knew she didn't come back to
8 school the following year. She had been teaching
9 for 20 years. So I think that's the publication
10 and then the issue of the teachers knowing about
11 what was going on and questioning her ability to be
12 a teacher at that time was part of that publication
13 as well, Your Honor.

14 But we can be more specific if you ask
15 us to and we actually -- there is a case that cites
16 in our brief about amending the complaint to comply
17 with those requirements.

18 Moving into Mr. Conley's arguments for
19 civil conspiracy, I am talking kind of fast. Do
20 you have any questions for me right now?

21 THE COURT: Just your argument against
22 it.

23 MS. RIKARD: Thank you. As it relates
24 to the civil conspiracy claim, Mr. Conley made a
25 couple of arguments and the first one you talked

1 about was they had to agree to an unlawful
2 enterprise. The fact is that putting her on the
3 evaluation is lawful. I cannot argue, Your Honor,
4 that putting her on evaluation is not lawful. What
5 I am arguing --

6 THE COURT: What do you have as the two
7 -- I guess the two -- the principal and vice
8 principal conspired to do your client harm? What
9 evidence do you have?

10 MS. RIKARD: Yes, sir. So in the
11 complaint we pled that Ms. Paradis, my client,
12 brought up an issue of one particularly difficult
13 student who actually assaulted her in the
14 classroom. And she went to see Mr. Bohnstengel who
15 was the principal at that time and reported it and
16 she made it known to him at that time that she
17 wanted to place a report with the police because
18 she felt really threatened by this one particular
19 student. He encouraged her not do to that.

20 THE COURT: What would that have to do
21 with her evaluation?

22 MS. RIKARD: If you let me get there, I
23 am sorry, I am trying to do it as quickly as I can.
24 The reason why that played into the evaluation
25 process and all this is because they were angry

1 about the number of disciplinary referrals that
2 were coming from our client's classroom.

3 Mr. Bohnstengel, in fact, told my
4 client, and we pled this in the complaint, that he
5 did not want her making a police report because if
6 there were police reports coming from teachers that
7 would lower the overall grade of the school and
8 he's in charge of administration and he is
9 responsible for the running of the school and the
10 grades of the school.

11 THE COURT: Was any of that part of her
12 evaluation?

13 MS. RIKARD: Yes. The whole reason she
14 was placed on evaluation --

15 THE COURT: So they put her on
16 evaluation because she wanted to file a police
17 report?

18 MS. RIKARD: Because she was making the
19 disciplinary referrals, exactly.

20 THE COURT: Because what?

21 MS. RIKARD: Because she was making
22 disciplinary referrals.

23 THE COURT: Well, what do they put in
24 writing about her referrals?

25 MS. RIKARD: About that one?

1 THE COURT: Not her referral, what did
2 they did put in writing as to why they put her on
3 probation and what were the deficiencies?

4 MS. RIKARD: Well --

5 THE COURT: Were any of them that you
6 don't make police reports?

7 MS. RIKARD: Well, initially -- no,
8 that's the whole point. Initially there was not
9 anything cited about particularly why she was being
10 placed on the evaluation process to begin with and,
11 in fact, Mr. Bohnstengel in a letter said that he
12 had met with my client to talk about her
13 performance deficiencies and he never actually did
14 meet with her. He never talked to her. When she
15 got the letter she was completely caught off guard
16 because she had just passed her goals based
17 evaluation and the she receives a letter saying I
18 met with you to discuss performance deficiencies
19 and now I am putting you on formal evaluation. She
20 didn't know anything about it, had never talked to
21 him about it, never met with him about any
22 performance deficiencies.

23 THE COURT: Talk to me about your
24 special damages.

25 MS. RIKARD: So special damages, I'm

1 glad you asked. So we did plead in the complaint
2 special damages separate and apart from the
3 attorney fees and cost.

4 Specifically, in paragraph 37 we talk
5 about punitive damages. We also talk in
6 paragraph 36 about special damages for her being
7 blacklisted and ostracized. I have a case on
8 point, Your Honor. I argue another case in federal
9 court, the Grady case, I have copies for you and
10 opposing counsel, where the same issue came up on a
11 motion to dismiss about special damages.

12 And the Court in that case held those
13 were sufficient to withstand a 12 (b) (6) in federal
14 court. So if you don't mind, Your Honor, I will
15 pass those up to you.

16 THE COURT: That's okay, I don't need
17 it.

18 MS. RIKARD: It's a Grady v.
19 Spartanburg, et. al, case, and if you need me to
20 give a cite I can happily provide you a copy of it.
21 But the federal district court, it was Judge Ross
22 Anderson and Judge Jacquelyn Austin who upheld that
23 and allowed it to proceed to discovery on the same
24 basis.

25 THE COURT: Okay. Thank you very much.

1 Anything else?

2 MS. RIKARD: Lastly, Mr. Conley brought
3 up the outside the course and scope of employment
4 issue. And the motivation behind this is what's
5 outside the course and scope of the employment.
6 And that's the trouble with civil conspiracy
7 claims. When you have employers they are working
8 and using their jobs as a cover to do their unjust
9 motive.

10 And so in this case there's no way that
11 Mr. Bohnstengel or Ms. Spann could ever put her on
12 an evaluation but for the fact they're in a
13 position to do that. It's the motivation that we
14 cite to in the complaint and pled that we believe
15 is the bad basis for why she was put on it in the
16 first place. And acting out of harm towards her to
17 get her out because they didn't want the bad
18 disciplinary thing hanging over their school is a
19 bad motivation. That's what the civil conspiracy
20 is all about. Thank you, Your Honor.

21 THE COURT: Okay. Anything very
22 briefly?

23 MS. DUKES: No, Your Honor.

24 MR. CONLEY: Very briefly, Your Honor.
25 The Plaintiffs -- and this goes to the defamation

1 claim. I want to mention this to the Court. I
2 know the Court is familiar with the Tyler vs. Mack
3 cases and some of the cases afterwards. But if the
4 Court were to look at Tyler vs. Mack and the cases
5 that come afterwards that sort of talk about this
6 defamation by innuendo of defamation by act, I
7 think the Court would find, and if the Court looked
8 at all of those cases, including Tyler v. Mack,
9 involved an instance where the innuendo or the act
10 that was relied upon to constitute or argued
11 constitute defamation, there was some implication
12 of criminal conduct by the person. Some of those
13 cases involved being escorted out of a store by a
14 police officer or security. There's always this
15 implication of criminal conduct.

16 And in this case there's not even an
17 allegation in this complaint that anything that the
18 school district or the high school did implied
19 criminal conduct by Ms. Paradis and for that reason
20 I would simply mention and argue that I don't think
21 Tyler v. Mack applies here, nor any of the cases
22 that are after in that respect because the element
23 of criminal conduct by implication simply doesn't
24 exist here.

25 The issue about ostracized and

1 blacklisted as being an element of special damages,
2 Judge, that's simply a regurgitation of what the
3 claim is on the defamation claim. That's nothing
4 different than what they are claiming in the
5 defamation claim. Defamation by definition is
6 damages to your reputation and that damage to your
7 reputation could lead to things like ostracism.
8 And so that's nothing but a rebagging or recanning
9 of what they already and are already claiming in
10 regard to the defamation claim. So for that reason
11 we would simply argue those do not constitute
12 special damages as well.

13 THE COURT: Thank you so very much.
14 Give me an opportunity to read her complaint. I
15 haven't read her complaint. I have read her memo.
16 And I will give you a decision as soon as I have an
17 opportunity to read the complaint. Thank you very
18 much.

19 (These proceedings were concluded at
20 12:28 p.m., March 30, 2016, Charleston County,
21 South Carolina.)
22
23
24
25

CERTIFICATE OF REPORTER

I, Ruth C. Weese, Registered Diplomat
Reporter for the State of South Carolina at Large,
do hereby certify that the foregoing transcript is
a true, accurate, and complete record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 7th day of July, 2016 at
Charleston, Charleston County, South Carolina.

Ruth C. Weese

Ruth C. Weese

Registered Diplomat

Reporter

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Leisel Paradis

Plaintiff,

vs.

Charleston County School District, et al.,

Defendant.

IN THE COURT OF COMMON PLEAS
Ninth JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-5093

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Ashley C. Story, Bar No. _____ Address: Post Office Box 11675, Columbia, SC 29211 Phone. 803 799-9530 Fax 803 799-9533 E-mail: jlewiscromeraw.com Other: _____		Defendant's Attorney: Joshua D. Cagle, Bar No. _____ Address: 171 Church St., Ste: 310, Charleston, SC 29401 Phone. 843 577-9626 Fax 843 577-6672 E-mail: jcagle@clevelandlaborlaw.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Defs Notice of Motion and Motion to Dismiss or Alternatively for more Definite Statement Estimated Time Needed: 15 _____ Court Reporter Needed: ☐ YES ☒ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. 11/30/15 Date submitted Signature of Attorney for ☐ Plaintiff ☒ Defendant			
SECTION III: Motion Fee ☒ PAID - AMOUNT \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Leisel Paradis,

Plaintiff,

v.

Charleston County School District, James
Island Charter High School, and Robert
Bohnstengel and Stephanie Spann, in their
Individual capacities,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2015-CP-10-5093

**DEFENDANTS JAMES ISLAND
CHARTER HIGH SCHOOL AND
STEPHANIE SPANN'S NOTICE OF
MOTION AND MOTION TO DISMISS
OR, ALTERNATIVELY, FOR MORE
DEFINITE STATEMENT**

TO: ASHLEY C. STORY, ATTORNEY FOR PLAINTIFF

PLEASE TAKE NOTICE that the undersigned attorneys for Defendants James Island Charter High School ("JICHHS") and Defendant Stephanie Spann ("Spann") will move before the Presiding Judge of the Ninth Judicial Circuit at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina 29401, or at such other office as the Court may direct, after ten (10) days from the date of service hereof or at such time and place as the Court may direct, for an Order dismissing the Plaintiff's Complaint, or alternatively, requiring Plaintiff make a more definite statement, on the following grounds:

1. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action and therefore fails as a matter of law pursuant to Rule 12(b)(6), SCRCP, and should be dismissed in its entirety as against JICHHS and Spann.

2. Plaintiff's cause of action for defamation is barred by the applicable statute(s) of limitations.

3. Plaintiff's cause of action against JICHHS for defamation should be dismissed because it is entitled to immunity under the South Carolina Tort Claims Act.

4. Plaintiff's civil conspiracy cause of action is barred because Spann was statutorily required to subject Plaintiff to an evaluation and, therefore, could not have acted outside the course and scope of her employment in subjecting Plaintiff to such evaluation.

WHEREFORE, Spann and JICHHS respectfully move this Court for an Order dismissing Plaintiff's Complaint and awarding Spann and JICHHS such other and further relief as this Court may deem just and proper.

Alternatively, in the event that JICHHS and Spann's Motion to Dismiss is denied in whole or in part, JICHHS and Spann move this Court pursuant to Rule 12(e), SCRCP, for an Order requiring Plaintiff to make a more definite and certain statement as to the conduct of each Defendant allegedly giving rise to Plaintiff's causes of action and for such other and further relief as this Court may deem just and proper.

JICHHS and Spann's counsel intends to submit a memorandum in support of this Motion prior to a hearing.



Caroline Wrenn Cleveland
Bob J. Conley
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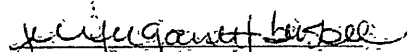
ATTORNEYS FOR DEFENDANT
JAMES ISLAND CHARTER HIGH
SCHOOL AND STEPHANIE SPANN

Charleston, South Carolina
November 30, 2015

CERTIFICATE OF SERVICE

This is to certify that I have this date caused to be served a copy of James Island Charter High School and Stephanie Spann's Motion to Dismiss or, Alternatively, For More Definite Statement on counsel for Plaintiff by depositing same in the United States Mail, First Class postage prepaid, and addressed to:

Ashley C. Story, Esq.
J. Lewis Cromer and Associates, LLC
Post Office Box 11675
Columbia, SC 29211


Jennifer Garrett Busbde

This 30th day of November, 2015.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Leisel Paradis

Plaintiff

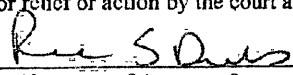
v.

Charleston County School District, James Island
Charter High School, Robert Bohnstengel and
Stephanie Spann, in their individual capacities,
Defendants.

IN THE COURT OF COMMON PLEAS FOR THE
NINTH JUDICIAL CIRCUIT

CASE NO.
2015-CP-10-5093

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Ashley C. Story, Esq., Bar No. Address: J. Lewis Cromer & Associates, LLC P.O. Box 11675, Columbia, SC 29211 phone: 803-799-9530 fax. e-mail: astory@jlewiscromerlaw.com other:		Defendant's Attorney: Rene S. Dukes, Bar No. 78215 Address: P. O. Box 893, Charleston, SC 29402 phone: 843-577-6726 fax: 843-724-8036 e-mail: rdukes@rhlawfirm.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Notice of Motion & Motion to Dismiss &, Alternatively, for a More Definite Statement Estimated Time Needed: <u>30 min</u> Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Defendant <u>11/30/15</u>			
SECTION III: Motion Fee ☒ PAID - AMOUNT: ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Leisel Paradis,

Plaintiff,

vs.

Charleston County School District, James
Island Charter High School, Robert
Bohnstengel and Stephanie Spann, in their
individual capacities,

Defendants.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2015-CP-10-5093

)
)
)
) **DEFENDANT'S CHARLESTON COUNTY**
) **SCHOOL DISTRICT'S AND ROBERT**
) **BOHNSTENGEL'S NOTICE OF MOTION**
) **AND MOTION TO DISMISS AND,**
) **ALTERNATIVELY, FOR A MORE**
) **DEFINITE STATEMENT**

TO: PLAINTIFF ABOVE-NAMED AND HER LEGAL COUNSEL:

PLEASE TAKE NOTICE that the undersigned attorneys for Defendant Charleston County School District (CCSD) and Defendant Robert Bohnstengel (Bohnstengel) will move before the Presiding Judge of the Ninth Judicial Circuit at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina 29401, or at such other office as the Court may direct, after ten (10) days from the date of service hereof or at such time and place as the Court may direct, for an Order dismissing the Plaintiffs' Complaint, or alternatively, requiring Plaintiff make a more definite statement, on the following grounds:

1. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action and therefore fails as a matter of law pursuant to Rule 12(b)(6) and should be dismissed in its entirety as against Defendants CCSD and Bohnstengel.
2. Plaintiff's cause of action for defamation is barred by the applicable statute(s) of limitations.
3. Plaintiff's cause of action against Defendant CCSD for defamation should be dismissed because it is entitled to immunity under the South Carolina Tort Claims Act.

4. Plaintiff's cause of action against Defendant CCSD for defamation should be dismissed because CCSD is not liable for any activity related to James Island Charter School. S.C. Code Ann. §59-40-190(C).

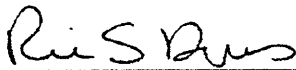
5. Plaintiff's civil conspiracy cause of action is barred because Defendant Bohnstengel was statutorily required to subject Plaintiff to an evaluation and, therefore, could not have acted outside the course and scope of his employment in subjecting Plaintiff to such evaluation.

This Motion will be supported by the pleadings, documents on file, arguments of counsel, and a Memorandum of Law to be filed with this Court.

WHEREFORE, Defendants respectfully move this Court for an Order dismissing Plaintiff's Amended Complaint and awarding Defendants such other and further relief as this Court may deem just and proper.

Alternatively, in the event that Defendants CCSD's and Bohnstengel's Motion to Dismiss is denied in whole or in part, these Defendants move this Court pursuant to Rule 12(e) for an Order requiring Plaintiff to make a more definite and certain statement as to the conduct of each Defendant allegedly giving rise to Plaintiff's causes of action and for such other and further relief as this Court may deem just and proper.

ROSEN, ROSEN & HAGOOD, LLC

By: 
Rene S. Dukes, Esquire
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726
(843) 724-8036 (f)
rdukes@rrhlawfirm.com

ATTORNEYS FOR DEFENDANTS
CCSD AND BOHNSTENGEL

Charleston, South Carolina
November 30, 2015

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2015-CP-10-5093

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2015 NOV 13 00:12:16

Debra L. Hill
Debra L. Hill

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
Ninth JUDICIAL CIRCUIT

COUNTY OF Charleston)

CASE NO.: 2015-CP-10-5093

Leisel Paradis)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

Charleston County School District, et al.,)

Defendant.)

Plaintiff's Attorney:

Ashley C. Story, Bar No. _____

Address:

P.O. Box 11675, Columbia, SC 29211

Phone: 803 799-9530 Fax 803 799-9533

E-mail: _____ Other: _____

Defendant's Attorney:

Bob J. Conley, Bar No. 12243

Address:

171 Church St., Ste: 310, Chas, SC 29401

Phone: 843 577-9626 Fax 843 577-6672

E-mail: bconley@clevelandlaborlaw.com Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Defendants Amended Motion to Dismiss or, Alternatively, For More Definite Statement

Estimated Time Needed: 15

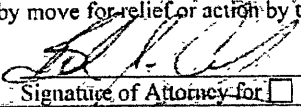
Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

3/18/16

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE: _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED - AMOUNT DUE: \$** _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Leisel Paradis,

Plaintiff,

v.

Charleston County School District, James
Island Charter High School, and Robert
Bohnstengel and Stephanie Spann, in their
Individual capacities,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2015-CP-10-5093

**DEFENDANTS JAMES ISLAND
CHARTER HIGH SCHOOL AND
STEPHANIE SPANN'S
AMENDED MOTION TO DISMISS
OR, ALTERNATIVELY, FOR MORE
DEFINITE STATEMENT**

TO: ASHLEY C. STORY, ATTORNEY FOR PLAINTIFF

PLEASE TAKE NOTICE that the undersigned attorneys for Defendants James Island Charter High School ("JICHs") and Defendant Stephanie Spann ("Spann") will move before the Presiding Judge of the Ninth Judicial Circuit at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina 29401, or at such other office as the Court may direct, after ten (10) days from the date of service hereof or at such time and place as the Court may direct, for an Order dismissing the Plaintiff's Complaint, or alternatively, requiring Plaintiff make a more definite statement, on the following grounds:

1. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action and therefore fails as a matter of law pursuant to Rule 12(b)(6), SCRCP, and should be dismissed in its entirety as against JICHs and Spann.
2. Plaintiff's cause of action for defamation is barred by the applicable statute(s) of limitations.
3. Plaintiff's cause of action against JICHs for defamation should be dismissed because it is entitled to immunity under the South Carolina Tort Claims Act.

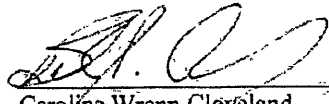
4. Plaintiff's civil conspiracy cause of action is barred because Spann was statutorily required to subject Plaintiff to an evaluation and, therefore, could not have acted outside the course and scope of her employment in subjecting Plaintiff to such evaluation.

5. Plaintiff's claims and causes of action are barred by the doctrines of res judicata and/or collateral estoppel.

WHEREFORE, Spann and JICHHS respectfully move this Court for an Order dismissing Plaintiff's Complaint and awarding Spann and JICHHS such other and further relief as this Court may deem just and proper.

Alternatively, in the event that JICHHS and Spann's Motion to Dismiss is denied in whole or in part, JICHHS and Spann move this Court pursuant to Rule 12(e), SCRPC, for an Order requiring Plaintiff to make a more definite and certain statement as to the conduct of each Defendant allegedly giving rise to Plaintiff's causes of action and for such other and further relief as this Court may deem just and proper.

JICHHS and Spann's counsel intends to submit a memorandum in support of this Motion prior to a hearing.



Caroline Wrenn Cleveland
Bob J. Conley
Emmanuel J. Ferguson
CLEVELAND & CONLEY, L.L.C.
One Seventy One Church Street, Suite 310
Charleston, South Carolina 29401
Telephone: (843) 577-9626
Facsimile: (843) 577-6672
ccleveland@clevelandlaborlaw.com
bconley@clevelandlaborlaw.com
eferguson@clevelandlaborlaw.com

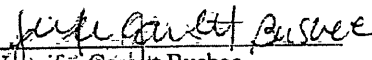
ATTORNEYS FOR DEFENDANT
JAMES ISLAND CHARTER HIGH
SCHOOL AND STEPHANIE SPANN

Charleston, South Carolina
March 18, 2016

CERTIFICATE OF SERVICE

This is to certify that I have this date caused to be served a copy of James Island Charter High School and Stephanie Spann's Amended Motion to Dismiss or, Alternatively, For More Definite Statement on counsel for Plaintiff by depositing same in the United States Mail, First Class postage prepaid, and addressed to:

Ashley C. Story, Esquire
J. Lewis Cromer and Associates, LLC
Post Office Box 11675
Columbia, South Carolina 29211


Jennifer Garrett Busbee

This 18th day of March, 2016.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Leisel Paradis

Plaintiff

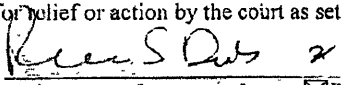
v:

Charleston County School District, James Island
Charter High School, Robert Bohnstengel and
Stephanie Spann, in their individual capacities,
Defendants.

IN THE COURT OF COMMON PLEAS FOR THE
NINTH JUDICIAL CIRCUIT

CASE NO.
2015-CP-10-5093

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Ashley C. Story, Esq., Bar No. Address: J Lewis Cromer & Associates, LLC P.O. Box 11675, Columbia, SC 29211 phone: 803-799-9530 fax: e-mail: astory@jlcwisecromerlaw.com other:		Defendant's Attorney: Rene S. Dukes, Bar No. 78215 Address: P. O. Box 893, Charleston, SC 29402 phone: 843-577-6726 fax: 843-724-8036 e-mail: rdukes@rrhlawfirm.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Notice of Motion & Amended Motion to Dismiss &, Alternatively, for a More Definite Statement **Please schedule to be heard at the hearing already scheduled on March 30, 2016 at 11:30 a.m. Estimated Time Needed: Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order 3/18/16 Signature of Attorney for☒ Defendant			
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCF) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE: CODE: Date:	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____			

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Leisel Paradis,

Plaintiff,

vs.

Charleston County School District, James
Island Charter High School, Robert
Bohnstengel and Stephanie Spann, in their
individual capacities,

Defendants.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO. 2015-CP-10-5093

)
)
)
) DEFENDANTS CHARLESTON COUNTY
) SCHOOL DISTRICT'S AND ROBERT
) BOHNSTENGEL'S NOTICE OF MOTION
) AND AMENDED MOTION TO DISMISS
) AND, ALTERNATIVELY, FOR A MORE
) DEFINITE STATEMENT
)
)
)

FILED
2016 MAR 18 PM 3:40
CLERK OF COURT

TO: PLAINTIFF ABOVE-NAMED AND HER LEGAL COUNSEL:

PLEASE TAKE NOTICE that the undersigned attorneys for Defendant Charleston County School District (CCSD) and Defendant Robert Bohnstengel (Bohnstengel) will move before the Presiding Judge of the Ninth Judicial Circuit at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina 29401, or at such other office as the Court may direct, after ten (10) days from the date of service hereof or at such time and place as the Court may direct, for an Order dismissing the Plaintiffs' Complaint, or alternatively, requiring Plaintiff make a more definite statement, on the following grounds:

1. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action and therefore fails as a matter of law pursuant to Rule 12(b)(6) and should be dismissed in its entirety as against Defendants CCSD and Bohnstengel.
2. Plaintiffs causes of action are barred by the doctrines of res judicata and/or collateral estoppel.
3. Plaintiff's cause of action for defamation is barred by the applicable statute(s) of limitations.

4. Plaintiff's cause of action against Defendant CCSD for defamation should be dismissed because it is entitled to immunity under the South Carolina Tort Claims Act.

5. Plaintiff's cause of action against Defendant CCSD for defamation should be dismissed because CCSD is not liable for any activity related to James Island Charter School. S.C. Code Ann. §59-40-190(C).

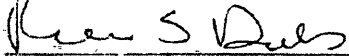
6. Plaintiff's civil conspiracy cause of action is barred because Defendant Bohnstengel was statutorily required to subject Plaintiff to an evaluation and, therefore, could not have acted outside the course and scope of his employment in subjecting Plaintiff to such evaluation.

This Motion will be supported by the pleadings, documents on file, arguments of counsel, and a Memorandum of Law to be filed with this Court.

WHEREFORE, Defendants respectfully move this Court for an Order dismissing Plaintiff's Amended Complaint and awarding Defendants such other and further relief as this Court may deem just and proper.

Alternatively, in the event that Defendants CCSD's and Bohnstengel's Motion to Dismiss is denied in whole or in part, these Defendants move this Court pursuant to Rule 12(e) for an Order requiring Plaintiff to make a more definite and certain statement as to the conduct of each Defendant allegedly giving rise to Plaintiff's causes of action and for such other and further relief as this Court may deem just and proper.

ROSEN, ROSEN & HAGOOD, LLC

By: 

Rene S. Dukes, Esquire
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726

ATTORNEYS FOR DEFENDANTS
CCSD AND BOHNSTENGEL

Charleston, South Carolina
March 18, 2016

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Leisel Paradis,

Plaintiff,

vs.

Charleston County School District, James
Island Charter High School, Robert
Bohnstengel and Stephanie Spann, in their
individual capacities,

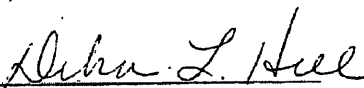
Defendants.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2015-CP-10-5093

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of March, 2016 a true and correct copy of Defendant's Charleston County School District's and Robert Bohnstengel's Notice of Motion and Amended Motion to Dismiss and, Alternatively, for a More Definite Statement was emailed and placed in an envelope with first class postage prepaid and affixed thereto and mailed to the following:

Ashley C. Story, Esquire
J. Lewis Cromer & Associates, LLC
P.O. Box 11675
Columbia, SC 29211
astory@jlewiscromerlaw.com


Debra L. Hill

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-10-5093

Leisel Paradis,

Plaintiff,

v.

Charleston County School District, James
Island Charter High School, Robert
Bohnstengel and Stephanie Spann, in their
individual capacities,

Defendants.

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS'
MOTIONS TO DISMISS AND MOTIONS FOR MORE DEFINITE
STATEMENT

The Plaintiff, by and through her undersigned counsel, requests that this Honorable Court deny the Defendants' Motions¹ to Dismiss and Motions for More Definite Statement filed pursuant to Rules 12(b)(6) and 12(e), respectively, South Carolina Rules of Civil Procedure ("SCRCP") as they relate to the Plaintiff's cause of action for defamation against Defendants Charleston County School District ("District") and James Island Charter High School ("JICHHS") and civil conspiracy against Individual Defendants Robert Bohnstengel ("Bohnstengel") and Stephanie Spann ("Spann"). The Defendants' motions should be denied for the following reasons:

¹ All Defendants filed an Amended Motion to add an argument for *res judicata* and collateral estoppel on March 18, 2016. Their Amended Motions were not filed within the ten (10) days required by statute for notice; however, the undersigned counsel has agreed to argue the same at the scheduled motion hearing for March 30, 2016. At the time of submitting this Memorandum in Opposition to both the presiding Judge (five (5) business days before the hearing) and for filing with the Clerk of Court, the undersigned has not received any supplemental memoranda from counsel for the Defendants and respectfully requests that she be given leave to amend her Memorandum in Opposition to address any specific arguments, statutes, and/or case law cited by counsel for all Defendants.

PROCEDURAL HISTORY

Leisel Paradis ("Plaintiff") filed her Complaint on September 17, 2015, asserting a cause of action for defamation against the District and JICHHS and for civil conspiracy against the Individual Defendants. (Complaint at ¶¶ 23-37). Defendants filed their Motions on November 30, 2015. Subsequently, on March 18, 2016, Defendants filed amended motions to include arguments for *res judicata* and collateral estoppel.

STATEMENT OF THE PLEADINGS

Plaintiff was formerly employed with Defendant District as an English Teacher at JICHHS, which is a school located within the District. (Compl. at ¶¶ 1-2). Plaintiff worked under the supervision of both Individual Defendants prior to her termination² and successfully met her Goals Based Evaluation ("GBE") each year. *Id.* at ¶¶ 4-5, 7.

During the 2012-2013 school year, Plaintiff was the victim of a terrible verbal assault from one of her students who had well-documented disciplinary issues; Plaintiff reported the same to the Individual Defendants and made it clear that she believed it was necessary to file a police report. (Compl. at ¶¶ 8-9). Bohnstengel became angry with Plaintiff concerning her wish to file a police report because he believed and informed Plaintiff that such a report would reflect poorly upon JICHHS as it related to disciplinary reports. *Id.* After Plaintiff reported this incident, she met with another JICHHS Assistant Principal to review and sign-off on her successfully completed GBE for the 2012-2013 school year. *Id.* at ¶ 10.

Despite having received a passing GBE, Plaintiff was notified by Bohnstengel that she was being placed on the SAFE-T/ADEPT evaluation ("evaluation") for the upcoming (2013-2014) school year due to performance issues, and Plaintiff's employment was contingent upon

² Plaintiff was terminated in 2015; she exhausted her administrative remedies. (Compl. at ¶ 22).

passing the same; Bohnstengel went on to allege that he had previously met with Plaintiff regarding these performance issues³, which was false. *Id.* at ¶¶ 12-13. Bohnstengel⁴, Spann, and another District employee served as Plaintiff's evaluators; none of them had any experience teaching English. *Id.* at ¶¶ 14. During the 2012-2013 evaluation period, Plaintiff was observed less than five (5%) percent of her teaching time and was failed by her evaluation team, which included Spann. *Id.* at ¶ 17. As a result, Plaintiff was placed on the evaluation⁵ for another school year – 2013-2014. *Id.* Yet again, Spann served on Plaintiff's evaluation team, although Spann previously recommended Plaintiff for the evaluation and served on the same team that failed her previously. *Id.* at ¶ 18.

During the course of the evaluation period of the 2013-2014 school year, Spann periodically changed Plaintiff's evaluation requirements on a number of occasions, which caused Plaintiff a great deal of confusion and extra time seeking clarity. *Id.* at ¶ 19. During that time, Plaintiff regularly met with her assigned mentor, who noted Plaintiff's progress and work towards meeting the goals set forth by the evaluation team. *Id.* However, despite Plaintiff's attempts, she was failed⁶ yet again; as a result, she lost her job. *Id.* at ¶¶ 20, 22.

³ Plaintiff never did meet with Bohnstengel to discuss any performance issues concerning her teaching work; subsequently, Plaintiff later learned that it was Spann who actually recommended Plaintiff for the evaluation due to the number of disciplinary referrals made by Plaintiff to administration. (Compl. at ¶ 13 and fn 1). Moreover, Plaintiff also learned that there were other teachers with similar disciplinary referral rates as Plaintiff, but Spann *did not* recommend those teachers for evaluations like she did for Plaintiff. *Id.* (emphasis added).

⁴ Upon information and belief, Bohnstengel was terminated from his employment mid-year; Spann continued to evaluate Plaintiff during the 2013-2014 evaluation. (Compl. at ¶¶ 15-16).

⁵ As a condition of Plaintiff's employment for the next school year, in addition to being placed on evaluation for a second year, Plaintiff was forced to work full-time. (Compl. at ¶ 17). If Plaintiff was indeed suffering from poor performance issues, it seems suspicious that she was offered a full-time position, as she had previously been working part-time.

⁶ Ironically, Plaintiff's scores at the beginning of the 2013-2014 evaluation were higher than the end of the year scores she received from Spann and the other evaluators, despite the progress Plaintiff made as documented by her mentor. (Comp. ¶ 20).

Throughout the two (2) year period that Plaintiff was subjected to the rigorous evaluation, Plaintiff's peers and colleagues at JICHHS knew that she was under great strain as a result of the evaluation and even went so far as to speculate and discuss among each other that Plaintiff's involvement with the evaluation was a result of administration's belief that Plaintiff could not effectively control her classroom. *Id.* at ¶ 21. Because Plaintiff underwent the evaluation for two (2) consecutive school years, her reputation as a hardworking English Teacher at JICHHS was impugned. *Id.* at 29. Furthermore, the Individual Defendants initiated the evaluation against Plaintiff, not as a result of disciplinary referrals, but out of malice to silence her from reporting a student to the police, which would negatively impact JICHHS ratings and further diminish the credibility of their administration. *Id.* at ¶¶ 34-36.

STANDARD OF REVIEW

I. Motion to Dismiss

Under Rule 12(b)(6) of the SCRCPP, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action. *Spence v. Spence*, 368 S.C. 106, 116 (2006); *Baird v. Charleston County*, 333 S.C. 519, 527 (1999). A court may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct.App. 2001). "Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." *Baird*, 333 S.C. at 527 (citing *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995)). "[A] ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff." *Williams*, 347 S.C. at 233. If, in viewing the facts and inferences reasonably drawn therefrom in the light most favorable to the plaintiff,

would entitle the plaintiff to relief on any theory of the case, then the Rule 12(b)(6) motion to dismiss should be denied. *Baird*, 333 S.C. at 511; *Gentry v. Yonce*, 337 S.C. 1, 5 (1999); and *Stiles*, 318 S.C. at 300. Looking at facts in the light most favorable to plaintiff, and with all doubts resolved in his behalf, the court must consider whether the pleadings articulate any valid claim for relief. *Id.*

The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Toussaint v. Ham*, 29S.C. 415, 357 S.E.2d 8 (1987). The court may grant a motion to dismiss only if the facts alleged in the complaint do not support relief under any theory of law. *Tatum v. Medical Univ. of South Carolina*, 346 S.C. 194, 552 S.E.2d 18 (2001).

II. Motion for More Definite Statement⁷

Under Rule 12(e) of the SCRCPP, a defendant may move for a more definite statement. See *Hopkins v. Shuman*, 235 S.C. 191, 193, 110 S.E.2d 713, 715 (1959) (“[D]ifferent causes of action must be stated separately in a complaint so that the defendant may plead to them separately, if necessary or desirable.”); *Fowler v. Floyd*, 204 S.C. 118, 28 S.E.2d 641 (1944) (when causes of action are jumbled in a complaint, defendant's remedy is to move to require them to be stated separately). While the instant case was pending on appeal, the new South Carolina Rules of Civil Procedure were adopted. See Act No. 100, 1985 S.C. Acts 277; H. Lightsey & J. Flanagan, *South Carolina Civil Procedure* (2d ed. 1985). S.C.R.Civ.P. 8(e)(2) provides: “A party may set forth two or more statements of a cause of action or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses.”

⁷ To the end that Defendants seek a more definite statement, they have failed to identify what they seek to be made more definitive; that is, they do not argue what is so vague that prevents them from properly answering the Complaint.

S.C.R.Civ.P. 12(e) provides: "If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading." *Henderson v. Gould, Inc.*, 288 S.C. 261, 263, 341 S.E.2d 806, 808 (Ct. App. 1986).

ARGUMENT

I. PLAINTIFF HAS SUFFICIENTLY ALLEGED FACTS TO SUPPORT A CLAIM FOR DEFAMATION AGAINST DEFENDANTS DISTRICT AND JICHHS.

Defendant District argues that Plaintiff's claim for defamation (1) fails as a matter of law, (2) is barred by the statute of limitations⁸; (3) is further barred by the South Carolina Tort Claims Act ("SCTCA")⁹; and (4) should be dismissed because District is not liable for any activity relating to JICHHS.¹⁰ (District Motion to Dismiss, pps. 1-2). Similarly, Defendant JICHHS argues that Plaintiff's claim for defamation should be dismissed for the same reasons as listed (1) – (3)

⁸ As set forth *supra*, Plaintiff brought her claim for defamation against both the District and JICHHS on September 17, 2015, which is within two (2) years of her first and second evaluations, which began on or around August of 2012 and lasted through May of 2014. The statute of limitations applicable to actions for libel or slander is two (2) years running from the time of the defamatory statement. S.C. Code § 15-3-550(1); *see also Jones v. City of Folly Beach*, 326 S.C. 360, 483 S.E.2d 770 (Ct. App. 1997). Plaintiff argues that the acts taken to have her placed and kept on the evaluation for two (2) consecutive school years following her valid disciplinary reports created an inference that she could not manage her classroom, resulting in her being unable to perform her job, which is defamation *per se*. *See Fountain v. First Reliance Bank*, 398 S.C. 434, 730 S.E.2d 305 (S.C. 2012) (an insinuation may be defamatory); *Lynch v. Toys "R" Us-Delaware*, 375 S.C. 604, 654 S.E.2d 541 (Ct. App. 2007) (conduct may also convey defamatory meaning); *Moshtagi v. The Citadel*, 314 S.C. 316, 443 S.E.2d 915 (Ct. App. 1994) (impropriety or inadequacy in performing a trade or profession may be actionable *per se*).

⁹ The District and JICHHS are not immune from suit for defamation under the SCTCA. The SCTCA waives immunity of state political subdivisions from liability in tort; the SCTCA is the sole remedy for any tort committed by an employee of a governmental entity while acting within the course and scope of his or her official duty. S.C. Code § 15-78-200.

¹⁰ Defendant District argues that it is not responsible for any actions taken by JICHHS; however, Plaintiff alleges that she is an employee of Defendant District, as JICHHS is a school located within the District. (Comp. ¶ 1). Discovery is warranted on the issue of the District's oversight of JICHHS and its relationship with JICHHS to determine whether or not it is, in fact, liable for JICHHS's actions.

supra. (JICHs Motion to Dismiss, pps. 1-2).

A properly pled defamation claim must assert the following: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) actionability of the statement. *Argoe v. Three Rivers Behavioral Health, L.L.C.*, 392 S.C. 462, 474, 710 S.E.2d 67, 74 (2011). In this case, Plaintiff alleges sufficient facts to support each of the elements required by the law, and the Defendants' Motions to Dismiss should be denied.

a. Plaintiff alleges a false and defamatory statement.

A communication is defamatory if it tends "to impeach the honesty, integrity, virtue, or reputation, or publish the natural or alleged defects, of one who is alive, and thereby expose him to public hatred, contempt, ridicule, or obloquy, or to cause him to be shunned or avoided, or to injure him in his office, business, or occupation." *Smith v. Bradstreet*, 63 S.C. 525, 41 S.E. 763 (1902) (emphasis added). In the alternative, even if the statement is not considered a statement in words, the South Carolina Supreme Court has held that an actionable defamatory insinuation may be made by action or conduct, not just by words. *Tyler v. Macks Stores of South Carolina*, 275 S.C. 456, 458, 272 S.E.2d 633, 634 (1980).

Plaintiff alleges at one (1) specific ongoing defamatory act made by District and JICHs officials – including Bohnstengel and Spann, in the course and scope of their employment with Defendant District and JICHs. Plaintiff also alleges that the action of her termination, in conjunction with the surrounding events, constitutes an actionable defamation claim. Specifically, Plaintiff alleged that Bohnstengel placed her on the evaluation for performance deficiencies but later learned that Spann instigated this act as a result of Plaintiff's disciplinary

referrals, although Plaintiff was not alone in making the referrals as compared to her colleagues. (Compl. ¶ 12 and fn 1). Moreover, Plaintiff went on to allege that, as a result of being placed under administrative scrutiny for two (2) consecutive years, her colleagues and peers began speculating and inferring that Plaintiff could not manage her students and was unable to perform her job. (Compl. ¶¶ 21, 28-29, 30).

Similarly, Plaintiff alleges that the actions the District and JCHS took – terminating Plaintiff in the wake of Plaintiff's placement on evaluation, which is and of itself an indicator of poor work performance – is defamatory because, when taken together, a third party may assume and infer that Plaintiff's termination was the result of ineffective teaching on Plaintiff's part and that she was incapable of performing her job.

b. Plaintiff sufficiently alleges an unprivileged communication to a third party.

The second element of defamation is an unprivileged publication to a third party. *Id.* “No matter what a person may write, if it is not published, there is of course no liability, since no one is injured.” *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 520, 506 S.E.2d 497, 507 (1998) (Toal, C.J., concurring) (citing *Carver v. Morrow*, 213 S.C. 199, 202, 48 S.E.2d 814, 816 (1948)). The publication is the communication, intentionally or by a negligent act, to a third party who is someone other than the person defamed. *Id.* (citing 50 Am. Jur. 2d Libel & Slander § 235 (1995)).

Plaintiff alleges that unprivileged, defamatory actions were taken openly, so much so that Plaintiff's colleagues and peers were on notice that she was placed on an evaluation for two (2) years before she was not permitted to return to work. (Compl. at ¶ 20). Plaintiff has the burden of alleging that the statement must have been communicated to someone other than the Plaintiff.

Tyler v. Macks Stores of South Carolina, 275 S.C. 456, 458, 272 S.E.2d 633, 634 (1980). Here, Plaintiff has met this requirement, and Defendant's Motion to Dismiss should be denied.

c. Plaintiff alleges fault of the defamatory statement on the part of Defendants District and JCHS through its agent and employees and further alleges an actionable claim.

"The defamatory meaning of a message or statement may be obvious on the face of the statement, in which case the statement is defamatory *per se*. An example of defamation *per se* is 'A is a thief.'" *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 508-509, 506 S.E.2d 497, 501 (1998). If the defamatory meaning is not clear then the statement is defamatory *per quod*. *Holtzscheiter*, 332 S.C. at 509, 506 S.E.2d at 501. In cases involving defamation *per quod*, the plaintiff must introduce facts extrinsic to the statement itself in order to prove a defamatory meaning. *Id.* An example of defamation *per quod* is "A had a baby" where the extrinsic fact is that A is unmarried. *Id.*

An actionable defamatory insinuation may be made by action or conduct, not just by words. *Tyler v. Macks Stores of South Carolina*, 275 S.C. 456, 458, 272 S.E.2d 633, 634 (1980). Moreover, defamation can be actionable even when it is indirect. *See Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898 (1987); *see also Tyler*, 275 S.C. at 458, 272 S.E.2d 633, 634 (1980). "To render the defamatory statement actionable, it is not necessary that the false charge be made in a direct, open and positive manner. A mere insinuation is as actionable as a positive assertion if it is false and malicious and the meaning is plain." *Tyler*, 275 S.C. at 458, 272 S.E.2d at 634 (citing *Timmons v. News and Press, Inc.*, 232 S.C. 639, 644, 103 S.E.2d 277, 280 (1958)). The utterance and the publication of statements rendering Plaintiff to be unable to teach due to classroom mismanagement are false and contain defamatory insinuations by their very existence. (Compl. fn 1 and ¶ 20). Further, the act of termination itself with the surrounding events may

lead to the insinuation of a defamatory act. *See Tyler*, 75 S.C. at 458, 272 S.E.2d 633, 634 (1980).

Lastly, where a statement is found to be actionable *per se* because it accuses a plaintiff of being unfit for his profession, general damages are presumed. *McBride v. Sch. Distr. of Greenville County*, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010). Plaintiff alleges that the statements made about her work performance are defamatory *per se*. (Comp. ¶ 31).

In conclusion, Plaintiff's defamation claim asserted against Defendants District and JICHs does not fail as a matter of law because Plaintiff has sufficiently established each element of the claim; Defendants' Motions to Dismiss should be denied.

II. PLAINTIFF HAS PROPERLY PLEAD A CLAIM FOR CIVIL CONSPIRACY AGAINST BOHNSTENGEL AND SPANN UPON WHICH RELIEF MAY BE GRANTED.

By way of their Motions to Dismiss, the Individual Defendants first assert that Plaintiff cannot maintain an action against the Individual Defendants for civil conspiracy because the Individual Defendants were statutorily required to place Plaintiff under evaluation ¹¹ (Individual Defendants' Motions to Dismiss, p. 2.)

A properly pled civil conspiracy claim must assert the following: (1) a combination of two or more persons; (2) with the purpose of injuring the plaintiff; and (3) causing special damages to the Plaintiff. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct.App.

¹¹ As an initial matter, the Individual Defendants fail to cite to any applicable statutory authority. In any event, Plaintiff argues that the fact that Spann convinced Bohnstengel to place Plaintiff on the evaluation as a result of Plaintiff's disciplinary referrals further supports Plaintiff's position that both Bohnstengel and Spann acted in concert outside the course and scope of their duties to harm Plaintiff because Spann *knew* that other teachers had as many if not more disciplinary referrals as Plaintiff but singled out Plaintiff for the evaluation for that reason *after* Plaintiff successfully passed her 2011-2012 GBE. (emphasis added).

1989).

a. Plaintiff alleges facts to support the first two elements of the claim.

To establish the first two elements, the plaintiff needs to allege “additional acts in furtherance of conspiracy.” *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981). Plaintiff alleges that Bohnstengel and Spann colluded together to protect themselves from being blamed for disciplinary issues that were going unchecked under their administration and to insulate themselves from blame of Plaintiff making a report with law enforcement for the same. (Compl. ¶¶ 9-10, 34-35). Plaintiff further alleges the following additional acts: Bohnstengel initially informed Plaintiff that she was being placed on evaluation *after* she successfully met her GBE for what he characterized as “performance issues” he previously addressed with Plaintiff; Spann actually instigated the evaluation process after noticing Plaintiff had several disciplinary referrals and singled out Plaintiff for the same; both served on Plaintiff’s evaluation team although they had no experience in English teaching; Spann failed Plaintiff in both years; and Spann constantly changed Plaintiff’s evaluation requirements. (Compl. ¶¶ 12, 15, 19, 20, fn 1) (emphasis added). Plaintiff goes on to allege that the Individual Defendants were motivated by self-protection and personal dislike of Plaintiff. (Compl. ¶ 34). Plaintiff successfully alleges the first two elements of civil conspiracy.

b. Plaintiff successfully alleges special damages.

The third element, special damage, must be satisfied to prevent a double recovery. *Kuznik v. Bess Ferry Assocs.*, 342 S.C. 579, 610, 538 S.E.2d 15, 31 (Ct.App. 2000). Therefore, a properly pled civil conspiracy claim requires the plaintiff to plead special damages. “If a plaintiff merely repeats the damages from another claim instead of specifically listed special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed.”

Hackworth, 358 S.C. at 117, 682 S.E.2d 871 at 875 (citing *Vaught*, 300 S.C. at 209, 387 S.E.2d 95).

Here, the Plaintiff alleges that the Individual Defendants, while acting outside the course and scope of their employment, combined together for the purpose of scapegoating Plaintiff for disciplinary referrals and “blacklist[ing] and ostraciz[ing]” Plaintiff from education. (Compl. at ¶¶ 34, 36).

Additionally, Plaintiff alleges that she is entitled to special damages against the Individual Defendants for attorneys’ fees and costs for this specific cause of action. (Comp. at second prayer for relief). *Compare A.J.G Holdings LLC v. Dunn*, 392 S.C. 160, 708 S.E.2d 218 (Ct. App. 2011) (plaintiffs did not identify specific attorney’s fees or costs they contended qualified as special damages). Plaintiff pled special damages that are separate and distinct from those damages pled in her other claim because the damages pled in the defamation claim are exclusively set forth against the Defendants District and JICHs and not the Individual Defendants. (Complaint. at ¶ 32).

For the foregoing reasons, this Court should allow Plaintiff’s civil conspiracy claim against the Individual Defendants to proceed to discovery and should DENY their Motions to Dismiss.

III. PLAINTIFF’S CLAIMS ARE NOT BARRED BY *RES JUDICATA* OR COLLATERAL ESTOPPEL.

In their Amended Motions, Defendants assert that Plaintiff’s claims are barred by *res judicata* and the doctrine of collateral estoppel. Defendants, in their filed motions, fail to cite to any case law or statutory authority to support this position; as such, their motion, as to this ground, should be denied.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully asks this Honorable Court to DENY the Defendants' motions and allow this case to proceed to discovery. In the alternative, the Plaintiff respectfully requests that this Honorable Court GRANT her leave to amend the Complaint to promote the ends of justice.¹²

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March 24, 2016

Columbia, South Carolina

¹² See *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716 (S.C. Ct. App. 2005) (citing *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997) ("Leave to amend pleadings pursuant to Rule 15, SCRCP, shall be liberally and freely given when justice so requires and does not prejudice any other party."))

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2015-CP-10-5093

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FACTS ALLEGED IN COMPLAINT

Plaintiff's Complaint alleges that Defendant Bohnstengel became angry with her after she informed him that she wanted to file a police report regarding a violent and harassing assault she suffered from a student in her classroom during the 2012-13 school year. Compl., ¶¶ 8, 9. She alleges that, shortly thereafter, she was notified by Defendant Bohnstengel that she was being placed on SAFE-T/ADEPT evaluation for the following school year in accordance with their prior meeting. Compl., ¶ 12. Plaintiff was shocked by this notification because she had not previously met with Defendant Bohnstengel, and she had met all of her goals of her GBE (Goals Based Evaluation) for the 2012-13 school year. Compl., ¶¶ 11, 13.

Despite her efforts to reverse the decision of Defendant Bohnstengel, she was subject to evaluation for the 2013-14 school year. Compl., ¶ 14. Defendant Bohnstengel was one of three evaluators for Plaintiff; however, he was terminated before Plaintiff's evaluation was complete.

Compl., ¶¶ 14, 15. He was then replaced by Maureen Jessup for the remainder of the evaluation period. Compl., ¶ 16. Plaintiff failed the evaluation for the 2013-14 and was again placed on evaluation for the 2014-15 school year. Compl., ¶ 17.

Plaintiff was concerned that she would not be treated fairly in the second evaluation because Defendant Spann, who had been on the prior evaluation team, would again serve as one of her three evaluators. Compl., ¶ 19. According to Plaintiff, during the second year of evaluation, Defendant Spann changed the requirements of her evaluation, causing Plaintiff to be confused. Compl., ¶ 19. Plaintiff met with her mentor, Charity Scruggs, almost daily. Compl., ¶¶ 18, 19. Ms. Scruggs noted that Plaintiff was under strain, but that she was doing all she could to please the evaluators. Compl., ¶ 19. Despite her efforts, Plaintiff failed the evaluation during the second year, scoring lower at the end of the year than she had at the beginning. Compl., ¶ 20. All of Plaintiff's peers and colleagues were aware that she was being evaluated and saw the physical and emotional toll it took on Plaintiff. Compl., ¶ 21. Plaintiff was terminated because she failed the evaluation for two consecutive years. Compl., ¶22. Plaintiff, thereafter, exhausted her administrative remedies. Compl., ¶22.¹

Plaintiff's Complaint alleges a cause of action for defamation of character against Defendants CCSD and James Island Charter High School (JICHHS), as well as a cause of action against Defendants Bohnstengel and Spann for civil conspiracy.

¹ The administrative remedies available to a teacher are governed by the South Carolina Teacher Dismissal Act. Specifically, a teacher who has been terminated exhausts her administrative remedies when she requests a hearing before the District Board of Trustees and receives a determination from the Board as to "whether the evidence showed good and just cause" for the dismissal. S.C. Code Ann. §59-25-470. Furthermore, the "teacher has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present *any and all* defenses to the charges." Id. § 59-25-470 (emphasis added).

ARGUMENT

A. Standard of Review.

A Rule 12(b)(6) motion to dismiss should be granted when the pleadings, construed in the light most favorable to the non-moving party, fail to allege sufficient facts to state a cause of action. Rule 12(b)(6), SCRCP; Haskell Co. v. Morgan, 274 S.C. 261, 262 S.E.2d 737 (1980).

As stated in DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293 (1981):

A [motion to dismiss] admits the facts well-pleaded in the complaint but does not admit the inferences drawn by the plaintiff from such facts. In short, a [motion to dismiss] a complaint does not admit conclusions of law pleaded therein.

274 S.E.2d at 296; Carolina Winds Owners' Ass'n v. Joe Harden Builder, Inc., 297 S.C. 74, 374 S.E.2d 897, 899 (Ct. App. 1988) ("A motion under Rule 12(b)(6) . . . admits the well pleaded facts in the complaint, but it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law."). An allegation of a mere legal conclusion is insufficient to state a cause of action. Jones v. Gilstrap, 288 S.C. 525, 343 S.E.2d 646 (1986); Russell v. City of Columbia, 301 S.C. 117, 390 S.E.2d 463 (Ct. App. 1989) ("The court must take well pleaded factual allegations as true. However, allegations which are conclusory rather than factual should be disregarded.")

B. Plaintiff's Defamation Claim Should be Dismissed as a Matter of Law.

Plaintiff alleges that she was slandered by allegedly false, oral and written statements made against her by "agents and servants of Defendant District and Defendant JICHHS acting in the course and scope of their employment." Compl. ¶¶ 25-26. Plaintiff's allegations fail as a matter of law and should be dismissed as to Defendant CCSD because: (1) Defendant CCSD is entitled to sovereign immunity; (2) Defendant CCSD is not liable for any activity related to Defendant JICHHS under S.C. Code Ann. § 59-40-190(C); (3) Plaintiff's claim for defamation is

barred by the applicable statute of limitations; (4) even if the Court finds Defendant CCSD is not entitled to immunity, Plaintiff's claim fails to facts sufficient to constitute a cause of action for defamation; and (5) Plaintiff's claim for defamation is barred by the doctrine of res judicata because it could have—and should have—been raised at the hearing before the CCSD Board.

1. Defendant CCSD is entitled to a dismissal of Plaintiff's claim for defamation because it is subject to sovereign immunity.

Plaintiff's claim for defamation is subject to the South Carolina Tort Claims Act (SCTCA), which provides the sole remedy available to a plaintiff for civil wrongs alleged to have been committed by a government agency. Hawkins v. City of Greenville, 358 S.C. 280, 292, 594 S.E.2d 557, 563 (Ct. App. 2004). CCSD is a governmental entity subject to the protections of the SCTCA. S.C. Code Ann. § 15-78-30(d). Although the SCTCA waived absolute immunity for torts committed by government actors, it limited liability under certain circumstances. S.C. Code Ann. § 15-78-40 (Supp. 2003). Specifically, in adopting the SCTCA, the General Assembly continued the grant of immunity to the political subdivisions of the State and their employees "while acting within the scope of official duty" S.C. Code Ann. § 15-78-20(b). When examining a provision which potentially limits the liability of a government agency, the Court should liberally construe the portion of the Act in favor of the government defendant. Hawkins, 358 S.C. at 292, 594 S.E.2d at 563. School officials are not liable for allegedly defamatory conduct performed in the discharge of their official duties. De Levay v. Richmond Cty. Sch. Bd., 284 F.2d 340, 340 (4th Cir. 1960). Where a government official is entitled to immunity, the defense is available, regardless of his rank or his motives, and even when his conduct is within the "outer perimeter of his line of duty." Green v. Cauthen, 379 F. Supp. 361, 374 (D.S.C. 1974).

Plaintiff's claim for defamation appears to be based on the allegations that "[a]ll of the Plaintiff's peers and colleagues knew she was undergoing the evaluation process" and that "[b]y virtue of placing and holding Plaintiff on the evaluation process for two years – which was widely known at JICHHS – Plaintiff's credibility as a teacher was greatly diminished." Compl., ¶¶ 21, 28. Thus, the gravamen of Plaintiff's cause of action is that CCSD defamed her when they placed her on formal evaluation for two consecutive school years.

However, CCSD is entitled to absolute immunity for placing Plaintiff on formal evaluation because assessing teacher competence is a statutory duty of all school districts in South Carolina. See S.C. Code Ann. § 59-26-40 ("A teacher employed under a continuing contract must be evaluated on a continuous basis. At the discretion of the local district and based on an individual teacher's needs and past performance, the evaluation may be formal or informal."). By placing Plaintiff on formal evaluation, CCSD was clearly acting within the scope of its official, statutorily-mandated duties, such that there is no liability under the SCTCA. Even Plaintiff acknowledges in her Complaint that the allegedly false statements and actions were made by agents of the CCSD "while acting within the course and scope of their employment." Compl., ¶¶ 29, 31. For this reason alone, the Court should dismiss Plaintiff's cause of action for defamation against Defendant CCSD.

2. Plaintiff's cause of action against Defendant CCSD for defamation should be dismissed because CCSD is not liable for any activity related to James Island Charter School.

South Carolina Code Ann. § 59-40-190(C) provides, in pertinent part: "A local school district [is] immune from civil or criminal liability with respect to all activities related to a charter school they sponsor." Because Plaintiff's claim for defamation arose solely from

activities related to Defendant JCHS, Defendant CCSD is not liable to Plaintiff, and is entitled to dismissal of this cause of action.

3. Plaintiff's claim for defamation is barred by the applicable statute of limitations.

A cause of action for defamation must be brought within two years of the time the claim arose. Jones v. City of Folly Beach, 326 S.C. 360, 368, 483 S.E.2d 770, 774 (Ct. App. 1997) (citing S.C. Code Ann. § 15-3-550 (Supp. 1995)). Plaintiff alleges Defendant CCSD defamed her "[b]y virtue of *placing* and holding Plaintiff on the evaluation process for two years" Compl., ¶ 28 (emphasis added). According to her Complaint, Plaintiff was notified that she was being placed on formal evaluation shortly after her meeting with Richard Glickman in March of 2013, and she was, in fact, subject to evaluation beginning with the 2013-14 school year. Compl., ¶¶ 11, 12, 14. Thus, Plaintiff's cause of action for defamation arose as early as March of 2013, or as late as August 2013, when the 2013-14 school year began. However, Plaintiff did not commence this litigation until September 22, 2015, after the expiration of the two-year statute of limitations for defamation claims. Therefore, her claim for defamation is time-barred.

4. Plaintiff does not state a claim for defamation and dismissal is proper under SCRCP 12(b)(6).

Even if the Court were to determine that CCSD is subject to liability, Plaintiff's claim for defamation should be dismissed against both Defendant CCSD because her complaint fails to state facts sufficient to constitute a cause of action for defamation. See Rule 12(b)(6), SCRCP.

To establish a cause of action for defamation, the Plaintiff must show: "(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special

harm or the existence of special harm caused by the publication.” Erickson v. Jones St. Publishers, L.L.C., 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006).

In Pagano v. Martin, 397 F.2d 620 (4th Cir. 1968), the Fourth Circuit Court of Appeals addressed a similar situation, in which the alleged defamatory statements occurred in connection with a report that was issued pursuant to an employer’s authorized duties. In that case, the alleged libel appeared in a performance evaluation report issued by the defendants, who were the plaintiff’s superior officers on the USS Robert A. Owens, a naval destroyer ship. Pagano, 397 F.2d at 620. The court acknowledged that the evaluation report “downgraded [the plaintiff] sharply and recommended he not be re-enlisted in the future.” Id. In affirming the district court’s dismissal of the libel claim on the defendants’ motion for summary judgment, the Court of Appeals noted: “The report authorized by the Bureau of Naval Personnel Manual, was made by the defendant officers *as part of their official duties*. With the trial court, we think the suit, as a matter of law, cannot be maintained.” Id. (emphasis added).

Here, the Complaint is devoid of factual allegations that actually support Plaintiff’s contention that there was an unprivileged, defamatory communication made to a third party. The alleged defamatory material is nothing more than a negative evaluation of Plaintiff’s professional performance, and Defendant CCSD is not only authorized, but mandated by law to perform teacher evaluations, some of which, by their very nature, will result in substandard reviews.

Alternatively, Defendants would request a more definite statement with respect to Plaintiff’s allegation that there was a defamatory publication. Specifically, Plaintiff has failed to identify who actually published or made the alleged defamatory statements, and to whom such statements were made. Without those facts to support Plaintiff’s allegations, her claim must fail, or at the very least be plead with greater specificity.

5. Plaintiff's defamation claim is barred by the doctrine of res judicata.

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Catawba Indian Nation v. State, 407 S.C. 526, 537-38, 756 S.E.2d 900, 906 (2014). Under the doctrine of res judicata, a "litigant is barred from raising any issues which were adjudicated in the former suit and *any issues which might have been raised in the former suit.*" Id. (citing Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999)) (emphasis added).

The doctrine of res judicata applies to the decisions of state agencies, barring the relitigation of issues which were or could have been raised before an administrative hearing body. S. Carolina Dep't of Soc. Servs. v. Winyah Nursing Homes, Inc., 282 S.C. 556, 563, 320 S.E.2d 464, 468 (Ct. App. 1984); Wright v. Marlboro Cty. Sch. Dist., 317 S.C. 160, 164, 452 S.E.2d 12, 15 (Ct. App. 1994) ("Ordinarily, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action."); see also Bennett v. South Carolina Dep't of Corrections, 305 S.C. 310, 408 S.E.2d 230 (1991). In Wright, the South Carolina Court of Appeals stated:

In Perry v. State Law Enforcement Div., 310 S.C. 558, 426 S.E.2d 334 (Ct. App. 1992), this Court relied on Bennett to give preclusive effect to the State Employee Grievance Committee's decision to uphold an employee's termination in the employee's collateral breach of contract action. The court reasoned the two actions arose out of the same facts and sought adjudication that the termination was unwarranted. *The employee could have defended against his termination before the Grievance Committee by asserting the same rights and defenses available to him in the breach of contract action.* Therefore, the court did not permit the employee to raise the same issues in a civil suit which could have been raised before the Grievance Committee.

Wright, 317 S.C. at 164, 452 S.E.2d at 15 (citing Bennett, 305 S.C. at 313, 408 S.E.2d at 232) (emphasis added).

The facts and circumstances giving rise to Plaintiff's hearing before the CCSD Board (as required by the South Carolina Teacher Dismissal Act) are the exact same facts contained in her Complaint. Plaintiff could have raised the issues she now pleads in her Complaint at that time, as defenses or otherwise, but did not do so. Therefore, Plaintiff is now barred by the doctrine of res judicata from relitigating those issues which she should have raised before the appropriate administrative hearing body.

C. Plaintiff's Civil Conspiracy Claim Should be Dismissed as a Matter of Law.

Plaintiff's Complaint alleges that Defendants Bohnstengel and Spann conspired against her and targeted Plaintiff for an "unwarranted and invasive evaluation," and that as a result, Plaintiff suffered special damages in the form of "being blacklisted and ostracized from the profession of education." Compl. ¶¶ 35-36. However, Plaintiff's claim for civil conspiracy fails as a matter of law and should be dismissed because: (1) Plaintiff fails to sufficiently and/or specifically state any special damages beyond those alleged in her other cause(s) of action; and (2) the actions of Defendants Bohnstengel and Spann that form the apparent basis of Plaintiff's conspiracy claim were all done within the course and scope of their employment, such that no actionable conspiracy exists.

1. Plaintiff fails to state with specificity the special damages she sustained as a result of Defendants' alleged conspiracy.

"A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing *special damage* to the plaintiff." Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 324, 701 S.E.2d 39, 46 (Ct. App. 2010) (quoting McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006) (emphasis added)). Civil conspiracy

consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage. Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822, 831 (Ct. App. 2012). "The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to a common design." Cricket Cove Ventures, 390 S.C. at 324, 701 S.E.2d at 46. To establish a conspiracy, "evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005) (citation omitted).

Rule 9(g) provides that "[w]hen items of special damage are claimed, they shall be specifically stated." Rule 9(g), SCRCP.

This rule is based upon the distinction between general and special damages. General damages are inferred by the law itself, as they are the immediate, direct, and proximate result of the act complained of. In contrast, special damages are not implied by law because they are the natural, but not the necessary or usual, consequence of the defendant's conduct. Thus, special damages must "be specifically stated" to avoid surprise to the other party.

Benedict Coll. v. Nat'l Credit Sys., Inc., 400 S.C. 538, 548, 735 S.E.2d 518, 523 (Ct. App. 2012) (citations omitted). Where a party alleges the same damages under a conspiracy claim as they do under the other causes of action, such allegations are insufficient to establish special damages. Gordon, 397 S.C. at 136, 723 S.E.2d at 831-32 (Ct. App. 2012); Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009) ("If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed.").

The only mention of special damages in Plaintiff's Complaint, beyond the conclusory statement that she has sustained them generally, is that she has been ostracized or blacklisted from the profession of education. Yet, Plaintiff fails to plead any specific facts to support such

an assertion, such as an inability to obtain other employment in the education profession. Furthermore, the alleged damages of being blacklisted and ostracized are simply a re-wording of the “injur[y] to her professional reputation” that are the claimed damages under her defamation cause of action. See Compl. ¶¶ 30-32. Therefore, Plaintiff’s Complaint fails to “specifically state” any special damages beyond those damages alleged under other causes of action, such that her conspiracy claim fails as matter of law.

2. Plaintiff’s civil conspiracy claim must fail because the conduct alleged of Defendants Bohnstengel and Spann was done in the scope of their employment.

A corporation or municipal entity can act only through its directors, officers, agents, and employees. See Anvar v. Greenville Hosp. Sys., No. 2007-UP-004, 2007 WL 8324255, at *5 (S.C. Ct. App. Jan. 10, 2007). Thus, where the actions of an entity’s agents and employees were all performed while acting within the course and scope of their authority, a conspiracy claim is barred by the intracorporate conspiracy doctrine. See id. (citing McMillan v. Oconee Mem’l Hosp., Inc., 367 S.C. 559, 564-65, 626 S.E.2d 884, 886-87 (2006) (holding a civil conspiracy cannot exist in the context of a principal-agent relationship where the individuals are all acting only for the corporation and not for any personal purpose of their own)); see also Cameron v. Church, 253 F. Supp. 2d 611, 623 (S.D.N.Y.2003) (stating “[t]he intracorporate conspiracy doctrine provides that the officers, agents and employees of a single corporate *or municipal entity*, each acting within the scope of his or her employment, legally are incapable of conspiring together”). “[J]ust as it is not legally possible for an individual to conspire with himself, it is not possible for a single legal entity consisting of the corporation and its agents to conspire with itself.” McAndrew v. Lockheed Martin Corp., 206 F.3d 1031, 1036 (11th Cir. 2000).

In Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Ct. App. 2010), the South Carolina Court of Appeals stated:

In *McMillan*, our Supreme Court limited this “intracorporate conspiracy” doctrine to persons acting within the scope of their employment, 367 S.C. at 564–65, 626 S.E.2d at 887. Other jurisdictions have similarly limited the doctrine. See *ePlus Tech., Inc. v. Aboud*, 313 F.3d 166, 179 (4th Cir. 2002) (“[T]he intracorporate immunity doctrine does not apply where a corporate ‘officer has an independent personal stake in achieving the corporation’s illegal objectives.’” (quoting *Greenville Pub. Co. v. Daily Reflector, Inc.*, 496 F.2d 391, 399 (4th Cir. 1974))); *McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031, 1036 (11th Cir. 2000) (“Simply put, under the doctrine, a corporation cannot conspire with its employees, and its employees, *when acting in the scope of their employment*, cannot conspire among themselves.”) (emphasis added); *Garza v. City of Omaha*, 814 F.2d 553, 556 (8th Cir. 1987) (“While it is true that a corporation cannot conspire with itself, an intracorporate conspiracy may be established where individual defendants are also named and those defendants act outside the scope of their employment for personal reasons.”).

Cricket Cove Ventures, 390 S.C. at 325-26, 701 S.E.2d at 46-47.

Plaintiff’s allegations against Defendants Bohnstengel and Spann all relate to conduct that occurred while they were acting within the course and scope of their employment as administrators at James Island Charter High School. Plaintiff’s bald allegations in the Civil Conspiracy section of her Complaint that Defendants “were able to specially inflict their evil agenda upon the Plaintiff and did so *outside of the scope of their own employment*”, Compl. ¶ 35 (emphasis added), are thinly-veiled and disingenuous assertions given the assertion on the preceding page that the exact same conduct and actions were “made against Plaintiff by agents and servants of Defendant District and Defendant JICHHS *acting in the course and scope of their employment*.” Compl. ¶ 29 (emphasis added). At all times relevant to the allegations of the Complaint, the individual Defendants were acting as agents and employees of Defendants CCSD and JICHHS, and Plaintiff fails to allege any facts to support a conclusion to the contrary. Thus, Plaintiff’s civil conspiracy cause of action should be dismissed.

CONCLUSION

For the foregoing reasons, Defendants CCSD and Bohnstengel respectfully request that this Court grant their Motion to Dismiss because Plaintiff's claims fail as a matter of law.

ROSEN, ROSEN & HAGOOD, LLC

By: 

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ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
March 24, 2016

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2015-CP-10-00593

Plaintiff,

VS.

CERTIFICATE OF SERVICE

**Charleston County School District, James
Island Charter High School, Robert
Bohnstengel and Stephanie Spann, in
their individual capacities,
Defendant.**

Ashley C. Story, Esquire
J. Lewis Cromer & Associates, L.L.C.
1418 Laurel St., Suite A (29201)
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Columbia, SC 29211

Bob J. Conley, Esquire
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 Charleston, SC 29401

[Handwritten signature]

FILED
2016 MAR 25 AM 10:01
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

CR

ROSEN | HAGOOD

Rene S. Dukes
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April 13, 2016

VIA HAND DELIVERY

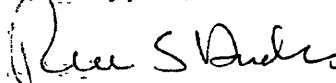
The Honorable J.C. Nicholson, Jr.
Charleston County Judicial Center
100 Broad Street, Suite 341
Charleston, SC 29401

Re: Leisel Paradis v. Charleston County School District, James Island Charter High School, Robert Bohnstengel and Stephanie Spann, in their Individual Capacities
Case No. 2015-CP-10-5093

Dear Judge Nicholson:

Enclosed is a proposed Order Dismissing Case affirming the District's Order in the above-referenced matter. If it meets your approval, I would appreciate your signing it and forwarding it to the Clerk for filing.

Sincerely yours,



Rene S. Dukes

RSD/dlh
Enclosure

cc: Bob J. Conley, Esquire (via email and U.S. Mail)
Chelsea Rikard, Esquire (via email and U.S. Mail)

RECEIVED

APR 18 2016

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	CASE NO.: 2015-CP-10-5093
Leisel Paradis,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Charleston County School District, James	)	ORDER DISMISSING CASE
Island Charter High School, Robert	)	
Bohnstengel and Stephanie Spann, in their	)	
individual capacities,	)	
	)	
Defendants.	)	

THIS MATTER is before the Court on the Amended Motions to Dismiss, and Alternatively, for a More Definite Statement, filed by Defendants Charleston County School District and Robert Bohnstengel on March 18, 2016, and filed by Defendants James Island Charter High School and Stephanie Spann on March 21, 2016. Plaintiff waived any objection to the timeliness of notice of the hearing on these motions. The Motions were heard on March 30, 2016. Based on the Complaint, the legal memoranda, and arguments of Counsel, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Plaintiff was a teacher at James Island Charter High School (JICHHS), which is a charter school located within the Charleston County School District (CCSD). Defendant Robert Bohnstengel was Plaintiff's Principal during a portion of the 2013-14 school year. Defendant Stephanie Spann was the Assistant Principal at JICHHS for the 2013-14 and 2014-15 school years.

Plaintiff's Complaint alleges that Defendant Bohnstengel became angry with her after she informed him that she wanted to file a police report regarding a violent and harassing assault she suffered from a student in her classroom during the 2012-13 school year. She alleges that,

shortly thereafter, she was notified by Defendant Bohnstengel that she was being placed on SAFE-T/ADEPT evaluation for the following school year in accordance with their prior meeting. Plaintiff was shocked by this notification because she had not previously met with Defendant Bohnstengel, and she had met all of her goals of her GBE (Goals Based Evaluation) for the 2012-13 school year.

Despite her efforts to reverse the decision of Defendant Bohnstengel, she was subject to evaluation for the 2013-14 school year. Defendant Bohnstengel was one of three evaluators for Plaintiff; however, he was terminated before Plaintiff's evaluation was complete. He was then replaced by Maureen Jessup for the remainder of the evaluation period. Plaintiff failed the evaluation for the 2013-14 school year and was again placed on evaluation for the 2014-15 school year.

Plaintiff was concerned that she would not be treated fairly in the second evaluation because Defendant Spann, who had been on the prior evaluation team, would again serve as one of her three evaluators. According to Plaintiff, during the second year of evaluation, Defendant Spann changed the requirements of her evaluation, causing Plaintiff to be confused. Plaintiff met with her mentor, Charity Scruggs, almost daily. Ms. Scruggs noted that Plaintiff was under strain, but that she was doing all she could to please the evaluators. Despite her efforts, Plaintiff failed the evaluation during the second year, scoring lower at the end of the year than she had at the beginning. All of Plaintiff's peers and colleagues were aware that she was being evaluated and saw the physical and emotional toll it took on Plaintiff. Plaintiff was terminated because she failed the evaluation for two consecutive years. Plaintiff, thereafter, exhausted her administrative remedies.¹

¹ The administrative remedies available to a teacher are governed by the South Carolina Teacher Dismissal Act. Specifically, a teacher who has been terminated exhausts her administrative remedies when she requests a hearing

Plaintiff's Complaint alleges a cause of action for defamation of character against Defendants CCSD and JCHS, as well as a cause of action against Defendants Bohnstengel and Spann for civil conspiracy.

CONCLUSIONS OF LAW

A. Standard of Review.

A Rule 12(b)(6) motion to dismiss should be granted when the pleadings, construed in the light most favorable to the non-moving party, fail to allege sufficient facts to state a cause of action. Rule 12(b)(6), SCRCP; Haskell Co. v. Morgan, 274 S.C. 261, 262 S.E.2d 737 (1980). As stated in DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293 (1981):

A [motion to dismiss] admits the facts well-pleaded in the complaint but does not admit the inferences drawn by the plaintiff from such facts. In short, a [motion to dismiss] a complaint does not admit conclusions of law pleaded therein.

274 S.E.2d at 296; Carolina Winds Owners' Ass'n v. Joe Harden Builder, Inc., 297 S.C. 74, 374 S.E.2d 897, 899 (Ct. App. 1988) ("A motion under Rule 12(b)(6) . . . admits the well pleaded facts in the complaint, but it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law."). An allegation of a mere legal conclusion is insufficient to state a cause of action. Jones v. Gilstrap, 288 S.C. 525, 343 S.E.2d 646 (1986); Russell v. City of Columbia, 301 S.C. 117, 390 S.E.2d 463 (Ct. App. 1989) ("The court must take well pleaded factual allegations as true. However, allegations which are conclusory rather than factual should be disregarded.")

B. Plaintiff's Defamation Claim Is Dismissed as a Matter of Law.

Plaintiff alleges that she was slandered by allegedly false, oral and written statements

before the District Board of Trustees and receives a determination from the Board as to "whether the evidence showed good and just cause" for the dismissal. S.C. Code Ann. § 59-25-470. Furthermore, the "teacher has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present *any and all* defenses to the charges." Id. § 59-25-470 (emphasis added).

made against her by “agents and servants of Defendant District and Defendant JICIIS acting in the course and scope of their employment.” Plaintiff’s allegations fail as a matter of law and are subject to dismissal because: (1) Defendants CCSD and JICHHS are entitled to sovereign immunity; (2) Plaintiff’s claim for defamation is barred by the applicable statute of limitations; and (3) Plaintiff’s claim fails to state facts sufficient to constitute a cause of action for defamation.

1. Defendants CCSD and JICHHS are entitled to a dismissal of Plaintiff’s claim for defamation because it is subject to sovereign immunity.

Plaintiff’s claim for defamation is subject to the South Carolina Tort Claims Act (SCTCA), which provides the sole remedy available to a plaintiff for civil wrongs alleged to have been committed by a government agency. Hawkins v. City of Greenville, 358 S.C. 280, 292, 594 S.E.2d 557, 563 (Ct. App. 2004). CCSD and JICHHS are each a governmental entity subject to the protections of the SCTCA. S.C. Code Ann. § 15-78-30(d). Although the SCTCA waived absolute immunity for torts committed by government actors, it limited liability under certain circumstances. S.C. Code Ann. § 15-78-40 (Supp. 2003). Specifically, in adopting the SCTCA, the General Assembly continued the grant of immunity to the political subdivisions of the State and their employees “while acting within the scope of official duty” S.C. Code Ann. § 15-78-20(b). When examining a provision which potentially limits the liability of a government agency, the Court should liberally construe the portion of the Act in favor of the government defendant. Hawkins, 358 S.C. at 292, 594 S.E.2d at 563. School officials are not liable for allegedly defamatory conduct performed in the discharge of their official duties. De Levay v. Richmond Cty. Sch. Bd., 284 F.2d 340, 340 (4th Cir. 1960). Where a government official is entitled to immunity, the defense is available, regardless of his rank or his motives, and

even when his conduct is within the "outer perimeter of his line of duty." Green v. Cauthen, 379 F. Supp. 361, 374 (D.S.C. 1974).

Plaintiff's claim for defamation appears to be based on the allegations that "[a]ll of the Plaintiff's peers and colleagues knew she was undergoing the evaluation process" and that "[b]y virtue of placing and holding Plaintiff on the evaluation process for two years – which was widely known at JICHs – Plaintiff's credibility as a teacher was greatly diminished." Compl., ¶¶ 21, 28. Thus, the gravamen of Plaintiff's cause of action is that CCSD and JICHs defamed her when they placed her on formal evaluation for two consecutive school years.

However, CCSD and JICHs are entitled to absolute immunity for placing Plaintiff on formal evaluation because assessing teacher competence is a statutory duty of all school districts in South Carolina. See S.C. Code Ann. § 59-26-40 ("A teacher employed under a continuing contract must be evaluated on a continuous basis. At the discretion of the local district and based on an individual teacher's needs and past performance, the evaluation may be formal or informal."). By placing Plaintiff on formal evaluation, CCSD and JICHs were each clearly acting within the scope of its official, statutorily-mandated duties, such that there is no liability under the SCTCA. Even Plaintiff acknowledges in her Complaint that the allegedly false statements and actions were made by agents of the CCSD and JICHs "while acting within the course and scope of their employment." Compl., ¶¶ 29, 31.

2. Plaintiff's claim for defamation is barred by the applicable statute of limitations and is hereby dismissed.

A cause of action for defamation must be brought within two years of the time the claim arose. Jones v. City of Folly Beach, 326 S.C. 360, 368, 483 S.E.2d 770, 774 (Ct. App. 1997) (citing S.C. Code Ann. § 15-3-550 (Supp. 1995)). Plaintiff alleges Defendants CCSD and JICHs defamed her "[b]y virtue of placing and holding Plaintiff on the evaluation process for two years

....” Compl., ¶ 28 (emphasis added). According to her Complaint, Plaintiff was notified that she was being placed on formal evaluation shortly after her meeting with Richard Glickman in March of 2013, and she was, in fact, subject to evaluation beginning with the 2013-14 school year. Compl., ¶¶ 11, 12, 14. Thus, Plaintiff’s cause of action for defamation arose as early as March of 2013, or as late as August 2013, when the 2013-14 school year began. However, Plaintiff did not commence this litigation until September 22, 2015, after the expiration of the two-year statute of limitations for defamation claims. Therefore, her claim for defamation is time-barred.

3. Because Plaintiff does not state a claim for defamation, her cause of action for defamation is dismissed pursuant to SCRCP 12(b)(6).

Even if CCSD and JICHS were subject to liability, Plaintiff’s claim for defamation is still subject to dismissal against both Defendants because her complaint fails to state facts sufficient to constitute a cause of action for defamation. See Rule 12(b)(6), SCRCP.

To establish a cause of action for defamation, the Plaintiff must show: “(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” Erickson v. Jones St. Publishers, I.L.C., 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006).

In Pagano v. Martin, 397 F.2d 620 (4th Cir. 1968), the Fourth Circuit Court of Appeals addressed a similar situation, in which the alleged defamatory statements occurred in connection with a report that was issued pursuant to an employer’s authorized duties. In that case, the alleged libel appeared in a performance evaluation report issued by the defendants, who were the plaintiff’s superior officers on the USS Robert A. Owens, a naval destroyer ship. Pagano, 397 F.2d at 620. The court acknowledged that the evaluation report “downgraded [the plaintiff]

sharply and recommended he not be re-enlisted in the future.” Id. In affirming the district court’s dismissal of the libel claim on the defendants’ motion for summary judgment, the Court of Appeals noted: “The report authorized by the Bureau of Naval Personnel Manual, was made by the defendant officers *as part of their official duties*. With the trial court, we think the suit, as a matter of law, cannot be maintained.” Id. (emphasis added).

Here, the Complaint is devoid of factual allegations that actually support Plaintiff’s contention that there was an unprivileged, defamatory communication made to a third party. The alleged defamatory material is nothing more than a negative evaluation of Plaintiff’s professional performance, and Defendants CCSD and JCHS are not only authorized, but mandated by law, to perform teacher evaluations, some of which, by their very nature, will result in substandard reviews. Furthermore, Plaintiff has failed to identify who actually published or made the alleged defamatory statements, and to whom such statements were made. Without those facts to support Plaintiff’s allegations, her claim must fail.

C. Plaintiff’s Civil Conspiracy Claim Is Hereby Dismissed as a Matter of Law.

Plaintiff’s Complaint alleges that Defendants Bohnstengel and Spann conspired against her and targeted her for an “unwarranted and invasive evaluation,” and that as a result, Plaintiff suffered special damages in the form of “being blacklisted and ostracized from the profession of education.” Compl ¶¶ 35-36. However, Plaintiff’s claim for civil conspiracy fails as a matter of law and is subject to dismissal because: (1) Plaintiff fails to sufficiently and/or specifically state any special damages beyond those alleged in her other cause(s) of action; and (2) the actions of Defendants Bohnstengel and Spann that form the apparent basis of Plaintiff’s conspiracy claim were all done within the course and scope of their employment, such that no actionable conspiracy exists.

1. **Plaintiff fails to state with specificity the special damages she sustained as a result of Defendants' alleged conspiracy.**

“A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing *special damage* to the plaintiff.” Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 324, 701 S.E.2d 39, 46 (Ct. App. 2010) (quoting McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006) (emphasis added)). Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage. Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822, 831 (Ct. App. 2012). “The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to a common design.” Cricket Cove Ventures, 390 S.C. at 324, 701 S.E.2d at 46. To establish a conspiracy, “evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise.” Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005) (citation omitted).

Rule 9(g) provides that “[w]hen items of special damage are claimed, they shall be specifically stated.” Rule 9(g), SCRCP.

This rule is based upon the distinction between general and special damages. General damages are inferred by the law itself, as they are the immediate, direct, and proximate result of the act complained of. In contrast, special damages are not implied by law because they are the natural, but not the necessary or usual, consequence of the defendant's conduct. Thus, special damages must “be specifically stated” to avoid surprise to the other party.

Benedict Coll. v. Nat'l Credit Sys., Inc., 400 S.C. 538, 548, 735 S.E.2d 518, 523 (Ct. App. 2012) (citations omitted). Where a party alleges the same damages under a conspiracy claim as they do under the other causes of action, such allegations are insufficient to establish special damages. Gordon, 397 S.C. at 136, 723 S.E.2d at 831-32 (Ct. App. 2012); Hackworth v. Greywood at

Hammett, LLC, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009) ("If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed.").

The only mention of special damages in Plaintiff's Complaint, beyond the conclusory statement that she has sustained them generally, is that she has been ostracized or blacklisted from the profession of education and that she incurred legal fees to pursue the claims set forth in her Complaint. Yet, Plaintiff fails to plead any specific facts to support such an assertion, such as an inability to obtain other employment in the education profession. Furthermore, the alleged damages of being blacklisted and ostracized are simply a re-wording of the "injur[y] to her professional reputation" that are the claimed damages under her defamation cause of action. See Compl. ¶¶ 30-32.

Additionally, Plaintiff's claim for costs and attorneys' fees in her Complaint does not constitute special damages related to her civil conspiracy claim. In this instance, Plaintiff is the "plaintiff," not a "defendant," and she "has not demonstrated how these attorney's fees are any different" than the fees "any other litigant incurs." Killian v. City of Abbeville, No. 8:14-1078-TMC, 2015 WL 1011339, *5 (D.S.C. March 6, 2015)(slip copy)(rejecting plaintiff's contention that his attorney's fees and costs constituted special damages in regard to his civil conspiracy claim). See also AJH Holdings, LLC v. Dunn, 392 S.C. 160, 168, 708 S.E.2d 218, 223 (Ct. App. 2011)("Every litigant represented by a lawyer incurs attorney's fees and costs:").

Therefore, Plaintiff's Complaint fails to "specifically state" any special damages beyond those damages alleged under other causes of action, such that her conspiracy claim fails as matter of law.

2. Plaintiff's civil conspiracy claim fails because the conduct alleged of Defendants Bohnstengel and Spann was done in the scope of their employment.

A corporation or municipal entity can act only through its directors, officers, agents, and employees. See Anvar v. Greenville Hosp. Sys., No. 2007-UP-004, 2007 WL 8324255, at *5 (S.C. Ct. App. Jan. 10, 2007). Thus, where the actions of an entity's agents and employees were all performed while acting within the course and scope of their authority, a conspiracy claim is barred by the intracorporate conspiracy doctrine. See id. (citing McMillan v. Oconee Mehl Hosp., Inc., 367 S.C. 559, 564-65, 626 S.E.2d 884, 886-87 (2006) (holding a civil conspiracy cannot exist in the context of a principal-agent relationship where the individuals are all acting only for the corporation and not for any personal purpose of their own)); see also Cameron v. Church, 253 F. Supp. 2d 611, 623 (S.D.N.Y.2003) (stating "[t]he intracorporate conspiracy doctrine provides that the officers, agents and employees of a single corporate or municipal entity, each acting within the scope of his or her employment, legally are incapable of conspiring together"). "[J]ust as it is not legally possible for an individual to conspire with himself, it is not possible for a single legal entity consisting of the corporation and its agents to conspire with itself." McAndrew v. Lockheed Martin Corp., 206 F.3d 1031, 1036 (11th Cir. 2000).

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individual defendants are also named and those defendants act outside the scope of their employment for personal reasons.”).

Cricket Cove Ventures, 390 S.C. at 325-26, 701 S.E.2d at 46-47.

Plaintiff's allegations against Defendants Bohnstengel and Spann all relate to conduct that occurred while they were acting within the course and scope of their employment as administrators at James Island Charter High School. Plaintiff's bald allegations in the Civil Conspiracy section of her Complaint that Defendants “were able to specially inflict their evil agenda upon the Plaintiff and did so *outside of the scope of their own employment*”, Compl. ¶ 35 (emphasis added), are thinly-veiled and disingenuous assertions given the assertion on the preceding page that the exact same conduct and actions were “made against Plaintiff by agents and servants of Defendant District and Defendant JICHS *acting in the course and scope of their employment*.” Compl. ¶ 29 (emphasis added). At all times relevant to the allegations of the Complaint, the individual Defendants were acting as agents and employees of Defendants CCSD and JICHS, and Plaintiff fails to allege any facts to support a conclusion to the contrary. Thus, Plaintiff's civil conspiracy cause of action is dismissed.

CONCLUSION

For the foregoing reasons, Plaintiffs claims for defamation and civil conspiracy fail as a matter of law, and Defendants' Amended Motions to Dismiss are granted.

IT IS THEREFORE ORDERED that Plaintiff's Complaint is DISMISSED.

AND IT IS SO ORDERED!

J. C. Nicholson, Jr.
Circuit Court Judge

April ____, 2016
Charleston, South Carolina

CR

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-5093

Leisel Paradis,

Plaintiff,

v.

Charleston County School District, James
Island Charter High School, Robert
Bohnstengel, and Stephanie Spann, in their
individual capacities

Defendants.

**PLAINTIFF'S NOTICE AND MOTION
TO RECONSIDER**

PLEASE TAKE NOTICE that Plaintiff, by and through her undersigned counsel, hereby moves pursuant to Rule 59(e), SCRPC, for an order altering or amending the Order granting the Defendants' Motion to Dismiss in the above-captioned matter. This motion for reconsideration is based on the following grounds:

PROCEDURAL HISTORY

Plaintiff filed the current action in the Charleston County Court of Common Pleas on September 17, 2015. Plaintiff brought a cause of action for Defamation against Defendant Charleston County School District ("District") and James Island Charter High School ("JICHHS"), and a cause of action for Civil Conspiracy against Robert Bohnstengel and Stephanie Spann. Defendants separately filed Motions pursuant to Rules 12(b)(6) of the South Carolina Rules of Civil Procedure, seeking dismissal as to all of Plaintiff's claims. A hearing was held before the Honorable J.C. Nicholson, Jr., Circuit Court Judge, on March 30, 2016. Judge Nicholson entered an Order granting Defendants' Motion to Dismiss, which was filed with the Clerk of Court on or about April 15, 2016.

RECEIVED

MAY 24 2016

J. LEWIS CROMER
& ASSOCIATES, L.L.C.

ARGUMENT FOR RECONSIDERATION

The Plaintiff is now seeking reconsideration of this Order by way of this motion and any additional arguments that may be supplemented to the Court. The Plaintiff intends to rely on the pleadings, the memorandum in opposition previously filed with the Court, arguments raised in the hearing, and any additional arguments as set forth herein or provided in additional memorandum in support to be filed with the Court.

I. Leave to Amend the Complaint

While the Plaintiff believes she has sufficiently pled the Amended Complaint, she requested leave of the Court to amend the complaint to clarify and remedy any concerns the Court may have.

Pursuant to South Carolina Rules of Civil Procedure Rule 15(a) this Court should grant the Plaintiff leave to amend his complaint. *See, Dockside Ass'n, Inc. v. Detyens, Simmons & Carlisle*, 297 S.C. 91, 94, 374 S.E.2d 907, 909 (Ct. App. 1988) ("where complaint is dismissed under Rule 12(b)(6), plaintiff should be granted leave to file an amended complaint"); citing, *Foman v Davis*, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). Plaintiff requests an amendment on the grounds that granting a Motion to Dismiss is a drastic remedy, the additional allegations discussed in Plaintiff's Memorandum in Opposition to the motion for judgment on the pleadings in this case would support an amendment consistent therewith, justice would require such, and the parties would not be prejudiced by an amendment. "Where a judgment on the pleadings is appropriate, the court has the discretion to grant the opposing party leave to amend. Amendments should be readily allowed so as to preclude entry of such judgment. In order to protect a plaintiff's right to amend, when a party challenges the sufficiency of a petition to state a cause of action, a motion

for judgment on the pleadings should be sustained only when an amendment cannot cure the defect.

~~Leave to amend should be granted if a party can show that he or she is able to state a claim for~~
relief." 61A Am. Jur. 2d Pleading § 551.

If the Plaintiff, assuming *arguendo*, has deficiencies in any of her claims then she should be given leave to amend her complaint, especially to clarify her special damages, the actions the Individual Defendants took outside the course and scope of their employment, and the defamatory statements or actions. The Order itself says the complaint lacked specificity, thus it would not be futile to amend the pleadings and provide such further specificity. Plaintiff requested leave to amend in her memorandum in opposition and the denial of such resulted in dismissal where an amendment to the pleadings was not futile. Therefore, Plaintiff respectfully requests this Court to reconsider the decision to grant Defendants' Motions to Dismiss and permit Plaintiff to amend her complaint.

II. Civil Conspiracy

As Set forth in Plaintiff's Memorandum in Opposition to Defendants' Motions to Dismiss, Plaintiff sufficiently pled that the Defendants Bohnstengel and Spann combined together with the intent to cause her harm, including special damages.

First, Plaintiff's complaint, memorandum, and arguments at the hearing set forth sufficient allegations that she suffered special damages as a result of actions of the Individual Defendants. The damages alleged within her claim for civil conspiracy differ from her other damages in nature and type. Plaintiff specifically pled that she was ostracized and blacklisted from amongst her peers because she was placed on formal evaluation twice for alleged classroom management deficiencies, although several of Plaintiff's peers had similar issues, and Plaintiff most recent GBE evaluation did not identify such issues. *See, Austin v. Torrington Co.*, 810 F.2d 416 (4th Cir. 1987). Rather than support Plaintiff's decision to file a police report against a student who violently

attacked her, the Individual Defendant's not only disagreed with her, but when so far as to single her out-and-place-her-on-a formal evaluation--all-while-knowing they could fail her.at.the.end.of the incredibly rigorous and intensive evaluation thus providing them the grounds to remove Plaintiff from her position. The intent and purpose of the ADEPT/SAFE-T program is not to be a ways and means for administrators to remove educators without just case. Additionally, Plaintiff specifically pled her attorney's fees and costs as a special damage. The cost of prosecuting an action is a properly considered special damage. *Benedict College v. Nat'l Credit Sys., Inc.*, 400 S.C. 538, 735 S.E.2d 518, 523 (2012).

Second, Plaintiff's complaint sufficiently alleges facts supporting her assertion that the Individual Defendants acted outside the course and scope of their employment. Plaintiff alleged in her complaint and argued in her memorandum that the Individual Defendants, acting under the color of their state titles, utilized the ADEPT/SAFE-T program as a means to perpetrate their agenda of removing Plaintiff from her position. Plaintiff's complaint specifically alleges that Bohnsetngel and Spann conspired against her for personal, rather than professional motivations; thus unveiling themselves of any intracorporate immunity. *See, Anthony v. Ward*, 336 Fed. Appx. 311 (4th Cir. 2009); *Pridgen v Ward*, Op. No. 4770 (S.C. Ct App. Filed December 22, 2010) (citing *Cricket Cove Ventures, LLC v. Gilland*, Op. No. 4730 (S.C. Ct. App. Filed Aug. 25, 2010); *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 14, 344 S.E.2d 379, 383 (Ct. App. 1986)).

Based on the foregoing, Plaintiff avers that she sufficiently pled that Defendants Bohnstengel and Spann acted in combination for the intent to cause her harm, including special damages. *See, Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150, (Ct. App. 1987) Therefore, Plaintiff respectfully requests that the grant of Defendants' Motion to Dismiss as to her claim for civil conspiracy be reversed.

III. Defamation

Plaintiff's Memorandum in Opposition and her arguments at the hearing identify specific allegations sufficient to support her claim for defamation. Most important to her claim for defamation is that the placement of Plaintiff on the ADEPT/SAFE-T evaluation process without justification, for two years in a row, falsely suggested that she was unfit in her profession and unable to successfully perform her duties as an educator, which is defamation *per se*. See, *Fountain v. First Reliance Bank*, 398 S.C. 434, 730 S.E.2d 305 (S.C. 2012) (an insinuation may be defamatory); *Lynch v. Toys "R" Us-Delaware*, 375 S.C. 604, 654 S.E.2d 541 (Ct. App. 2007) (conduct may also convey defamatory meaning); *Moshtagi v. The Citadel*, 314 S.C. 316, 443 S.E.2d 915 (Ct. App. 1994) (impropriety or inadequacy in performing a trade or profession may be actionable *per se*).¹

Though the qualifying defamatory actions began as early as March 2013, the action continued for a span of two years, in that Plaintiff was continuously held on formal evaluation and she was forced to repeat for the same for the 2014-2015 school year. Thus, Plaintiff's legal right to sue on this continuing action did not begin and end on the March or August dates discussed in the Court's order. Rather, Plaintiff's right to sue on this action continued well into the two year limitation period and Plaintiff avers that her action was timely.

Next, the Defendants are not entitled to sovereign immunity because the defamatory acts taken by the agents of the Defendants were done so in the course and scope of their employment. Plaintiff specifically alleged that the defamatory acts taken by the District's and JCHS agents were done in the prescribed manner. Thus, where the defamatory acts that culminated in Plaintiff's termination are not barred by the SCTCA, as it serves as the sole remedy for any tort committed by an employee of a governmental entity while acting within the course and scope of his or her official duty.

Lastly, Plaintiff sufficiently pled that the District and JCHS partook in defamatory action ~~and made defamatory statements by not only publishing a negative evaluation, but also by~~ consistently giving her failing scores on the ADEPT/SAFE-T evaluations; thus falsely demonstrating to unprivileged parties that she was unfit and incapable of fulfilling the duties of her profession. Plaintiff additionally alleged that the act of placing her on consecutive evaluations, which culminated in a termination, qualifies as a defamatory act cognizable under South Carolina law. *See, Tyler v Mack Stores of South Carolina*, 275 S.C. 456, 458, 272 S.E.2d 633, 634 (1980).

Based on the foregoing, Plaintiff avers that she sufficiently pled her claim that the Defendants defamed her. Therefore, Plaintiff respectfully requests this Court to reverse the grant of Defendants' Motions to Dismiss as to her claim for defamation.

CONCLUSION

This motion requests the Court to reconsider the specific arguments made in Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss and other documents provided to the Court at the hearing. This motion is further made pursuant to the South Carolina Rules of Civil Procedure, the pleadings, and all applicable statutory law and common law. This motion is made in good faith, supported by the sworn testimony and documents discovered in this case, supporting memoranda of law to be filed by plaintiffs' counsel prior to the hearing, and any memoranda or affidavits which they may file with the Court in support of this Motion or any arguments they may advance at any hearing. Plaintiff respectfully requests the Court reconsider its Order and permit this action to proceed to discovery.

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Respectfully Submitted,

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Attorneys for Plaintiff

April 28, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-10- 5093

Leisel Paradis

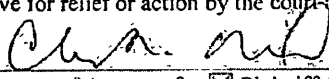
Plaintiff,)

vs.)

Charleston County School District, James Island
Charter High School, Robert Bohnstengel, and
Stephanie Spann, in their individual capacities)

Defendants.)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: J. Lewis Cromer, #1470 Chelsea R. Rikard, # 102355 J Lewis Cromer & Associates, LLC P.O. Box 11675, Columbia, SC 29211 Phone: 803-799-9530 Fax 803-799-9533 E-mail: crikard@jlewiscromerlaw.com	Defendants' Attorney: Rene S. Dukes, 78215 151 Meeting St, Suite 400 Charleston, SC 29401 E-mail: rdukes@rrhlawfirm.com Bob Conley, 12243 Cleveland & Conley LLC 171 Church St, Suite 310 Charleston, SC 29401 Email: bconley@clevelandlaborlaw.com
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order:  Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted: <u>April 28, 2016</u>	
SECTION III: Motion Fee ☒ PAID - AMOUNT: <u>\$25.00</u>	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED. \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-10-5093

Leisel Paradis,

Plaintiff,

v.

Charleston County School District, James
Island Charter High School, Robert
Bohnstengel and Stephanie Spann, in their
individual capacities,

Defendants.

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR
RECONSIDERATION**

The Plaintiff, by and through her undersigned counsel, requests that this Honorable Court grant her Motion for Reconsideration filed pursuant to Rule 59(e) South Carolina Rules of Civil Procedure ("SCRCP"). The Defendants filed a response to Plaintiff's motion on May 12, 2016. Plaintiff incorporates herein her arguments contained within her Motion filed on April 29, 2016, and replies to Defendants' Response by way of the following:

ARGUMENT

I. PLAINTIFF'S MOTION WAS TIMELY

Defendants first argue that Plaintiff's Motion was timely. A Motion for Reconsideration filed pursuant to Rule 59(e) of the SCRCP must be "served not later than 10 days after receipt of written notice of the entry of the order." Further, Rule 5(b) prescribes that a party represented by an attorney shall be served by way of service to their attorney; with the same being made by "mailing a copy to him at his last known address." Rule 6(e) then permits five days be added to a prescribed period whenever a party has the right or is required to do some act or take some

proceedings within a prescribed period after service of notice and the notice is served upon him by mail.

In support of their assertion that Plaintiff's Motion is untimely, Defendant's aver that the posting date of the Order Dismissing the Case on the Court's My Case Notification is the date on which Plaintiff received 'written notice of the entry of order.' However, the rule specifically requires *written notice* rather than electronic notice. It would be inequitable and against the principles of judicial economy to permit this theory to prevail thus requiring all parties to routinely inspect the Court's electronic system for the posting of the Court's Order. Furthermore, Defendants did not point to any case law or statute in support of their assertion that an electronic posting sufficiently qualifies as 'written notice' pursuant to Rule 59(e).

Rule 59(e) requires a moving party to act by filing a motion within a prescribed period – ten days. Furthermore, Plaintiff received copy of the Court's Order by mail on April 22, 2016. *See* (Exhibit A, Notice of Entry of Order). Thus Plaintiff was permitted an additional five days to file and serve her Motion pursuant to Rule 6(e). Plaintiff subsequently filed her Motion on April 29, 2016; seven (7) days after receiving the Court's Notice. Defendants admit in their Response that they were served on May 3, 2016, which is only 11 days after Plaintiff received written Notice by mail and within the prescribed period afforded by the SCRPC.

In conclusion, Plaintiff's Motion for Reconsideration was timely, and she respectfully requests this Court to grant the same.

II. PLAINTIFFS ARGUMENTS IN HER MOTION MIRROR THOSE MADE IN HER MEMORANDUM AND AT THE INITIAL HEARING

Each argument Plaintiff raised in her Motion for Reconsideration mirrored arguments she raised in her Memorandum in Opposition to Defendants' Motion to Dismiss and in the initial

hearing. Defendants' second and third arguments state that Plaintiff's Motion should be denied because her Motion raised new arguments that she failed to raise previously. However, Plaintiff's

Memorandum in Opposition to Defendants' Motion to Dismiss specifically requested this Court grant her leave to amend her Complaint to promote the ends of justice. Additionally, Plaintiff specifically requested during the initial hearing that if this Court found any deficiencies within her Complaint that she be permitted to amend the same. Therefore, the present motion is not the first instance in which she has put forth this request.

Further, Plaintiff's Motion sought to clarify or expound upon any issues she believed the Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. By way of her Motion, Plaintiff identified and specifically discussed the legal misunderstanding regarding the statute of limitations for her defamation claim. Moreover, Plaintiff sought to clarify any factual misunderstandings regarding her civil conspiracy claim by providing the Court with a more succinct explanation of the unlawful motivation of the Individual Defendants.

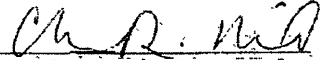
Therefore, Plaintiff's Motion for Reconsideration properly raised arguments that were previously raised and specifically identified factual and legal misunderstandings that she requests this Court to reconsider.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully asks this Honorable Court to GRANT her Motion for Reconsideration.

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Attorneys for Plaintiff

May 17, 2016

Columbia, South Carolina

Exhibit A

Notice of Entry of Order

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

CR

110



CHELSEA RAEGAN RIKARD
PO BOX 11675
COLUMBIA SC 29211-1675

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order dismissing case

CASE NO: 2015CP1005093

Leisel Paradis VS Charleston County School District , defendant, et al

This judgment was entered on the 15th day of April, 2016, and notice mailed first class on Monday, April 18, 2016, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

RECEIVED

APR 22 2016

J. LEWIS CROMER
& ASSOCIATES, L.L.C.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Leisel Paradis,

Plaintiff,

vs.

Charleston County School District, James
Island Charter High School, Robert
Bohnstengel and Stephanie Spann, in their
individual capacities,

Defendants.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2015-CP-10-5093
)
)
)

) **DEFENDANTS' RESPONSE TO**
) **PLAINTIFF'S MOTION TO**
) **RECONSIDER**
)
)
)

FILED
2016 MAY 12 AM 10:17
CLERK OF COURT

Plaintiff has moved this Court for to Reconsider its Order regarding Defendants' Motions to Dismiss. Based on the law and facts, this Motion should be denied on the following grounds.

I. THE PLAINTIFFS' MOTION IS UNTIMELY.

A motion to reconsider is authorized pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Rule 59(e) provides that "[a] motion to alter or amend the judgment shall be served not later than ten days after receipt of written notice of the entry of Order." The Order Dismissing Case was filed April 15, 2016, and posted on My Case Notification on April 18, 2016. Plaintiff's Motion to Reconsider was not filed until April 29, 2016, or eleven (11) days after written notice of the entry of the Order by the Court. Furthermore, it was not *served* on Defendants until May 3, 2016, or fifteen (15) days after written receipt of the notice of the Order. (See Exhibit A) There is a clear distinction between filing and service of papers. Proper service is made on parties and their counsel under Rules 4(a), (b), and (c) of the South Carolina Rules of Civil Procedure.; whereas, filing is addressed in the Rules 4(d) and (e). The timeliness of a motion to reconsider is adjudged by service and not by filing. However, under either standard, the Plaintiff's Motion is untimely and must be denied.

II. THE ARGUMENTS CONTAINED IN PLAINTIFF'S MOTION CANNOT BE CONSIDERED BECAUSE THEY WERE NOT RAISED AT THE INITIAL HEARING.

It is improper procedure for a party to advance a new legal argument in the context of a Motion to Reconsider pursuant to Rule 59(e). This proscription is well-established in the case law:

A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not. *See Natural Resources Defense Council v. U.S. E.P.A.*, 705 F.Supp. 698, 701 (D.D.C.1989), *vacated on other grounds*, 707 F.Supp. 3 (D.D.C.1989) ("Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced earlier."); *Smith v Stoner*, 594 F.Supp. 1091, 1118 (N.D.Ind.1984) ("Issues which could have been presented to the court for consideration previously, but which were not, are not the proper subject of Rule 59(e) relief; the issues are waived."); *Johnson v. City of Richmond*, 102 F.R.D. 623, 623 (E.D.Va.1984) ("I do not conceive of Fed.R.Civ.P. 59(e) as serving the office of providing a disappointed suitor with a post-judgment opportunity to argue that which could have been argued pre-judgment.").

Hickman v. Hickman, 301 S.C. 455, 456-57, 392 S.E.2d 481, 482 (Ct. App. 1990), *see also* Powell v. Potterfield, 2012 WL 10929124, *3 (S.C.Com.Pl.) ("It is that concern of judicial efficiency and fairness that underpins the rule stated in *Gartside*, that a party cannot use a Rule 59(e) motion to bring up issues not raised before judgment.")

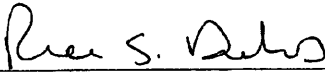
Plaintiff's request for Leave to Amend the Complaint could, and should, have been advanced at the initial hearing. Accordingly, the motion as to this request for relief is improper and should be denied.

III. THE ARGUMENTS CONTAINED IN PLAINTIFFS' MOTION CANNOT BE CONSIDERED BECAUSE THEY WERE NOT RAISED AT THE INITIAL HEARING

A motion pursuant to Rule 59(e) motion is a proper vehicle to request that the Court reconsider the issues and arguments in addition to asking the Court to alter and amend its judgment. Elam v. S. C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). A motion

pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure is appropriate where a party "believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue...." Id., 361 S.C. at 24, 602 S.E. 2d at 780. In her Motion to Reconsider, Plaintiff does not highlight any legal or factual misunderstanding, nor does she allege the Court failed to rule on an argument or issue. Instead, she merely refers back to her Memorandum in Opposition to Defendants' Motions to Dismiss and the arguments made at the hearing. Likewise, Defendants crave reference to the arguments advanced in their briefs and, verbally, before the Court. Because the Court correctly understood and fully considered the facts and the law of this case as set forth in the parties' briefs and arguments, Plaintiff's Motion to Reconsider is inappropriate and should be denied.

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May 11, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Leisel Paradis)

Plaintiff,)

vs.)

Charleston County School District, James)

Island Charter High School, Robert)

Bohnstengel and Stephanie Spann, in)
their individual capacities,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2015-CP-10-00593

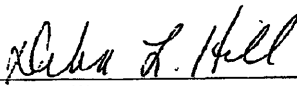
CERTIFICATE OF SERVICE

2016 MAY 12 AM 10:18
JULIA L. HILL
CLERK OF COURT

The undersigned states that on May 12, 2016, she served a copy of Defendant's Response to Plaintiff's Motion to Reconsider via electronic mail and by placing a copy in the mail o the following address(s):

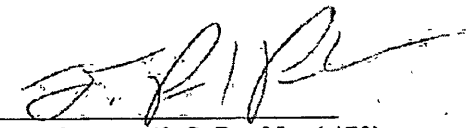
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Debra L. Hill

Certificate of Appellant

The undersigned here certifies, in accord with Rule 210(g), SCACR that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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JAN 03 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson Jr., Circuit Court Judge

Case No. 2016-001337

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JAN 03 2017

SC Court of Appeals

Leisel Paradis Appellant

v.

Charleston County School District, James Island Charter High School, Robert Bohnstengel, and
Stephanie Spann, in their individual capacities, ... Respondents

FINAL BRIEF OF APPELLANT

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Attorneys for Appellant

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STATEMENT OF THE ISSUES ON APPEAL

- I. WHETHER THE CIRCUIT COURT ERRED DISMISSING APPELLANT'S DEFAMATION CLAIM ON THE FOLLOWING GROUNDS:
 - A. THAT THE RESPONDENTS WERE IMMUNE FROM SUIT PURSUANT TO S.C. CODE ANN. § 15-78-20(B)?
 - B. THAT THE CLAIM WAS NOT BROUGHT WITHIN THE STATUTE OF LIMITATIONS? AND
 - C. THAT THE DEFAMATION CLAIM WAS NOT SUFFICIENTLY PLED?
- II. DID THE CIRCUIT COURT ERR DISMISSING APPELLANT'S CIVIL CONSPIRACY CLAIM FOR FAILURE TO PLEAD SPECIAL DAMAGES, AND ON THE BASIS THAT THE ALLEGED CONSPIRATORS WERE IMMUNE FROM SUIT?
- III. SHOULD THE CIRCUIT COURT HAVE GRANTED LEAVE TO AMEND?

STATEMENT OF THE CASE

Appellant, Leisel Paradis, filed this action alleging (1) defamation against Respondents Charleston County School District (“District”) and James Island Charter High School (“Charter School”); and (2) civil conspiracy against Respondents Robert Bohnstengel and Stephanie Spann on September 17, 2015. (R. pp. 14-24). The civil conspiracy claim is pled against Bohnstengel and Spann in their individual capacities. (R. p. 19). Respondents filed a Rule 12(b)(6), SCRPC Motion to Dismiss and alternative Motion for a More Definite Statement on November 30, 2015. That Motion was fully briefed. (*See*, R. pp. 72-84). Thereafter, the Respondent Charter School and Respondent Spann filed an Amended Motion to Dismiss on March 18, 2016, and the Respondent District and Respondent Bohnstengel filed an Amended Motion to Dismiss on March 21, 2016.

Oral arguments were held on March 30, 2016, before the Honorable J.C. Nicholson, Jr. in Charleston County. Respondents, upon request, submitted a proposed order to the Court on April 13, 2016 granting the Rule 12(b)(6) Motion to Dismiss. (R. pp. 101-112). That Order was signed on April 15, 2016 by Judge Nicholson.¹ (R. pp. 3-15). Paradis filed a Motion for Reconsideration which was fully briefed. (R. pp. 113-126). That motion was denied May 19, 2016. (R. pp. 1-2). Paradis timely filed her notice of Appeal. Paradis appeals the dismissal of her case.

PLEADINGS

The Respondent Charter School and Respondent District employed Paradis as an English teacher for nearly twenty years. (R. pp. 17-18 ¶¶ 1, 7). Respondent Bohnstengel was the principal at the Respondent Charter School and Respondent Spann was an Assistant Principal at the Respondent Charter School during the 2012-2013 school year. (R. p. 18 ¶ 4-5). Paradis successfully met her Goals Based Evaluation (“GBE”) for 2012-2013, and had successful performance evaluations prior thereto. (R. p. 18 ¶ 7).

¹ Respondent’s Motion for More Definite Statement was not ruled upon.

Paradis was verbally assaulted by a student, who had an established disciplinary record, during the 2012-2013 school year. (R. p. 18 ¶ 8). Paradis immediately reported the assault to Spann and Bohnstengel, and informed them that she felt it was necessary to file a police report as the assault was violent in nature. (R. p. 18 ¶ 9). Respondent Bohnstengel vehemently discouraged Appellant from filing the report; because, the report might negatively impact the Respondent Charter School's South Carolina Department of Education (SCDOE) report card. (R. p. 18 ¶ 9).

Paradis received her successful 2012-2013 GBE following her disagreement with Respondent Bohnstengel regarding the police report. However, shortly thereafter, Respondents Bohnstengel and Spann placed Paradis on a formal, rigorous evaluation plan for struggling teachers known as a SAFE-T plan for the 2013-2014 school year. (R. p. 19 ¶ 12). The SAFE-T plan had disciplinary implications, and could result in Appellant's termination. (*Id.*). Respondent Bohnstengel cited a prior meeting with Paradis as his basis for placing her on the SAFE-T. (*Id.*). That meeting never occurred. (R. p. 19 ¶ 13). The SAFE-T plan required Paradis be subjected to periodic evaluations by three individuals, and complete other rigorous assignments throughout the 2013-2014 school year. (R. p. 19 ¶ 12). Consistent with his opposition to Paradis filing a necessary police report, Paradis learned later that Respondent Bohnstengel recommended to Respondent Spann that Paradis be placed on a SAFE-T plan due to disciplinary referrals she made. (R. p. 19 fn. 1).

Paradis, pursuant to the SAFE-T plan, was to be evaluated throughout the 2013-2014 school year by three individuals: Respondents Bohnstengel, Respondent Spann, and another employee Kevin Eakes; none of Appellant's evaluators had experience in her field. (R. p. 19 ¶ 14). Bohnstengel was terminated prior to the completion of Appellant's 2013-2014 SAFE-T evaluation, and another evaluator was appointed in his stead (who also had no experience teaching English). (R. p. 20 ¶¶ 15-16). The three evaluators observed Appellant less than 5% of her total teaching time during the 2013-2014 school year; nevertheless, Paradis received a failing score at the end of the year. (R. p. 20

¶ 17). Paradis was forced to undergo the SAFE-T plan for a second year (the 2014-2015 school year) to avert termination. (*Id.*). Additionally, she was required to accept a full-time position; whereas, she was previously part-time. (*Id.*).

Paradis' 2014-2015 SAFE-T evaluators included Respondent Spann (R. p. 20 ¶ 18). Paradis contacted a fellow employee, of the Respondent District, regarding Spann's continuation as an evaluator, and was informed that typically the evaluators are wholly replaced. (*Id.*). Paradis was worried that Respondent Spann would not be objective; because Spann failed her the prior year, and was involved in Paradis' placement on the SAFE-T plan in the first place. (R. pp. 19-20 ¶ 18; *see also*, ¶ 12; *and*, fn. 1). Respondent Spann changed the plan's evaluation requirements multiple times throughout the 2014-2015 school year leaving Paradis perpetually confused about what she had to do in order to succeed. (R. p. 20-21 ¶ 19). Paradis regularly sought clarification on her assignments and requirements due to the same. (*Id.*). Appellant's appointed mentor, Charity Scruggs, met with Appellant almost daily, and noticed that Appellant was suffering from severe work related stress caused by the requirements of the SAFE-T program. (*Id.*). At the same time, Scruggs noted that Appellant was working hard to meet her plan's shifting requirements by employing various teaching strategies, asking for assistance, and utilizing suggestions offered to her. (R. pp. 20-21 ¶ 19-20). Respondent Spann, and her fellow evaluators, gave Appellant failing grade for her 2014-2015 SAFE-T evaluation. (R. p. 21 ¶ 20). Appellant was bizarrely scored higher at the beginning of the 2014-2015 school year in comparison to later in the year when she was implementing the strategies recommended to her. (*Id.*).

Appellant's peers and colleagues were made aware that she was twice placed on the SAFE-T evaluation. (R. p. 21 ¶ 21). Many of Paradis' peers within the English department commented to others that she was on the SAFE-T program; because administration perceived that she had issues

managing her classroom. (R. p. ¶ 21). Paradis was terminated on the stated basis that she failed the 2014-2015 SAFE-T evaluation. (R. p. 21 ¶ 22).

STANDARD OF REVIEW

This is an appeal of an order granting Rule 12(b)(6), SCRCP Motions to Dismiss. “[T]he appellate court [on Rule 12(b)(6)] applies the same standard of review implemented by the trial court.” *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 279, 648 S.E.2d 295, 298 (Ct. App. 2007) (citing *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001)).

“The trial court’s ruling on a Rule 12(b)(6) motion must be bottomed and premised solely upon the allegations set forth by the plaintiff.” *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001); citing, *Holy Loch Distributions v. Hitchcock*, 332 S.C. 247, 503 S.E.2d 787 (Ct.App.1998), *rev’d on other grounds*, 340 S.C. 20, 531 S.E.2d 282 (2000); *Berry v. McLeod*, 328 S.C. 435, 492 S.E.2d 794 (Ct.App.1997). “The [Trial Court’s Order] will not be sustained if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.” *Williams*, 553 S.E.2d at 499; citing, *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987); *McCormick v. England*, 328 S.C. 627, 494 S.E.2d 431 (Ct.App.1997). “The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief.” *Williams*, 553 S.E.2d at 499-500; citing, *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987); *Cowart v. Poore*, 337 S.C. 359, 523 S.E.2d 182 (Ct.App.1999).

ARGUMENT

The Circuit Court held that Paradis’ defamation claim against the Respondent School District and Respondent Charter School was: (1) barred by the South Carolina Tort Claims Act Appellant’s; (2) filed outside of the statute of limitations; and (3) insufficiently pled. (R. pp. 5-9). The Circuit Court dismissed Paradis’ civil conspiracy claim on the grounds of special damages and

intracorporate immunity. (R. pp. 9-13). The Lower Court additionally disregarded Paradis' request to amend her complaint contemporaneous with her opposition to the underlying motion. Paradis' claims are sufficiently pled, Respondents are not entitled to dismissal, and, assuming Respondents were entitled to dismissal, Paradis should have been given to leave to amend her Complaint.

I. PARADIS' DEFAMATION CLAIM IS SUFFICIENTLY ALLEGED, AND THE RESPONDENTS ARE NOT ENTITLED TO DISMISSAL AS A MATTER OF LAW.

Defamation requires: (1) a false and defamatory statement; (2) published, without privilege, to a third party; (3) fault on the part of the publisher; and (4) actionability of the statement. *Argoe v. Three Rivers Behavioral Health, L.L.C.*, 392 S.C. 462, 474, 710 S.E.2d 67, 74 (2011). A defamatory statement tends to impeach the honesty, integrity or reputation of a person. *See Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898 (1987); *Smith v. Bradstreet Co.* 63 S.C. 525, 41 S.E. 763 (1902). Extrinsic circumstances can render a statement defamatory when it would not ordinarily be interpreted as such. *Costas v. Florence Printing Co.*, 237 S.C. 655, 118 S.E.2d 696 (1961); *see also Mains v. K-Mart Corp.*, 297 S.C. 142, 375 S.E.2d 311 (Ct. App. 1988). "The defamatory meaning of a message or statement may be obvious on the face of the statement, in which case the statement is defamatory *per se*." *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 508-509, 506 S.E.2d 497, 501 (1998). Imputing one's credibility in their profession is *per se* defamatory. *Woodward v. South Carolina Farm Bureau Ins. Co.*, 277 S.C. 29, 282 S.E.2d 599 (1981). Malice and damages are presumed in a case of *per se* defamation. *See, Manley v. Manley*, 291 S.C. 325; 353 S.E.2d 312 (Ct. App. 1987); *McBride v. Sch. Distr. of Greenville County*, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010). South Carolina, in addition to by word and insinuation, recognizes defamation by action. *Tyler v. Macks Stores of South Carolina, Inc.*, 275 S.C. 456, 458, 272 S.E.2d 633, 634 (1980) ("It is established that a defamatory insinuation may be made by actions or conduct as well as by word.") (*citing*, 50 Am.Jur.2d Libel and Slander, Section 26).

The circuit Court erred in determining: (1) that the Respondents were immune from suit for defamation, (2) that Paradis' claim is time barred, and (3) that Paradis' claim is not sufficiently pled.

A. The Respondent District and Charter School are not immune from Suit.

The South Carolina Tort Claims Act (SCTCA) waives the state and its political subdivisions' tort immunity. S.C. Code Ann. § 15-78-10 *et. seq.* The SCTCA provides: "[t]he State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained [in the SCTCA.]" S.C. Code Ann. § 15-78-40. The SCTCA is the exclusive remedy for any tort committed by an employee of a governmental entity while acting within the course and scope of his or her official duty. S.C. Code Ann. § 15-78-200. A claim based on the conduct of government employees, acting within their scope of employment, should be alleged against the government employer. S.C. Code Ann. § 15-78-70(c) ("a person . . . shall name as a party defendant only the agency of political subdivision for which the employee was acting and is not required to name the employee individually.").

The Circuit Court held that because Schools and School Districts are required to evaluate instructors they are therefore immune from suit based on any defamation initially sourced on a teacher evaluation regardless of the propriety of the evaluation or the manner in which it was published to others. (R. pp. 6-7); (*citing*, S.C. Code Ann. § 15-78-20(b), *and* S.C. Code Ann. § 59-26-40). "The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense." *Steinke v. S. Carolina Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999); *citing*, *Strange v. South Carolina Dep't of Highways and Pub. Transp.*, 314 S.C. 427, 445 S.E.2d 439 (1994). The Respondent District and Charter School argued, and the Circuit Court agreed, that the intersection SCTCA Section 15-78-20(b) and S.C. Code Ann. § 59-26-40, regarding teacher

evaluations, immunized the Respondents from suit. Section 15-78-20(b) of the SCTCA maintains immunity for official duty conduct except as waived by SCTCA. S.C. Code Ann. § 59-26-40 requires school districts to evaluate teachers. The Respondents, and Lower Court by affirmation, did not cite to or establish a specific exception to the SCTCA's waiver of immunity applicable here, are not supported by governing precedent, and have mischaracterized Paradis' defamation claim.

The portion of the SCTCA relied on by the Circuit Court, Section 15-78-20(b), is subject to the SCTCA's general waiver of immunity: "The General Assembly in this chapter intends to grant the State . . . while acting within the scope of official duty, immunity from liability and suit for any tort **except as waived by this chapter.**" (emphasis added). The SCTCA specifically recognizes that government entities can be liable for conduct arising out of an official duty. S.C. Code Ann. § 15-78-200. (The SCTCA "is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the **employee's official duty.**") (emphasis added). The SCTCA generally provides: "The State . . . [is] liable for [its] torts in the same manner and to the same extent as a private individual under like circumstances, subject to the . . . exemptions from liability and damages contained herein." S.C. Code Ann. § 15-78-40. The Respondents, to establish an SCTCA exemption, must site to a specific exemption from liability. *See*, S.C. Code Ann. § 15-78-60; *See also, Steinke*, 520 S.E.2d at 152 (Government has burden of establishing an exception to liability.) The Respondents, and the Circuit Court, have not done so. Thus, S.C. Code Ann. § 15-78-20(b), alone, does give rise to immunity.

Section 15-78-20(b), and the SCTCA, has never been applied in the manner requested by the Respondents. Rather, Government entities have been required to establish an immunity exception to the SCTCA typically arising under Section 15-78-60. *See Steinke*, 520 S.E.2d 142. The Respondents' argument and the Circuit Court's order is based on inapplicable, non-governing authority. (R. pp. 6-7); *citing, De Levey v Richmond Cty. Sch. Bd.*, 284 F.2d 340, 340 (4th Cir. 1960); *and, Green v. Cauthen*, 379

F. Supp. 361, 374 (D.S.C. 1974). The first case relied upon by the Lower Court, *De Levy*, is a two page 1960 4th Circuit Decision interpreting Virginia Law and based on sovereign immunity. *De Levy*, 284 F.2d 340. *De Levy* preceded Virginia's State Tort Claims Act by 21 years. Va. Code Ann. § 8.01-195.3 (West) (Originally Passed 1981). *De Levy* a pre-tort claims act sovereign immunity case is wholly irrelevant to this matter. The second authority relied on by the Respondents and Circuit Court is a 1974 South Carolina District Court Case, *Green v. Cauthen*, preceding the SCTCA by 15 years. *Green*, a 42 U.S.C. § 1983 case against government officials, was decided prior to the passage of the South Carolina Tort Claims Act, and is similarly inapplicable to the present case. *Green*, 379 F. Supp. 361. The pre-tort claims act cases relied upon by the Respondents and Circuit Court do not support a finding of official immunity.

Even if the SCTCA or the authority relied upon by the Respondents did support immunity, The Lower Court reversibly misstated Paradis' defamation claim as solely arising out of her placement on the SAFE-T evaluation. Rather, Paradis' defamation claim concerns not only her placement on the SAFE-T evaluation, but also the alleged pretextual manner in which her SAFE-T evaluation was conducted, her termination thereupon, and that the grounds for her termination and placement to on the SAFE-T evaluation were made widely known to her peers. (R. pp. 21-23 ¶¶ 21, 23-32). The Lower Court unjustifiably narrowed Paradis' defamation claim as arising solely out of her placement on the SAFE-T evaluation.

B. Appellant's Defamation Claim was filed within the Statute of Limitations.

Defamation has a two year statute of limitations. *Jones v City of Folly Beach*, 326 S.C. 360, 368 483 S.E.2d 770, 774 (Ct. App. 1997) (citing S.C. Code Ann. § 15-3-550) (Supp. 1995)). South Carolina recognizes defamation by word and action. *Tyler*, 272 S.E.2d at 634. Paradis filed her defamation claim on September 17, 2015; thus any defamatory statements or actions occurring on or after September 17, 2013 are actionable.

The Circuit Court improperly narrowed Paradis' defamation claim as solely arising out of her initial placement on the SAFE-T evaluation at the beginning of the 2013-2014 school year. As pled, Paradis' defamation claim involves the words and conduct associated with her being maintained on the SAFE-T plan throughout the 2013-2014 school year, her continuation on that plan for 2014-2015, her termination, and publications to non-privileged co-workers incidental to the same; all of which would be actionable within the statute of limitations. (R. pp. 21-23 ¶¶ 21, 23-32). The post September 17, 2013 defamatory actions and conduct described above are actionable in accord with the continuous accrual doctrine. *See, State ex rel. Wilson v. Ortho-McNeil-Janssen Pharm., Inc.*, 414 S.C. 33, 77, 777 S.E.2d 176, 199 (2015), *reh'g granted* (July 8, 2015), *cert. denied sub nom. Ortho-McNeil-Janssen Pharm., Inc. v. S. Carolina ex rel. Wilson*, 136 S. Ct. 824, 193 L. Ed. 2d 766 (U.S.S.C. 2016) ("Janssen assumes, wrongly so, that its ability to successfully invoke the statute of limitations to bar the labeling claim prior to January 24, 2004, ends the labeling claim altogether."); *see also, Estate of Livingston v. Livingston*, 404 S.C. 137, 147, 744 S.E.2d 203, 209 (Ct. App. 2013) ("The supreme court has held that when a nuisance is continuing and the injury is abatable, the statute of limitations does not run merely from the time of the original intrusion on the property and cannot be a complete bar."); *and, Cutchin v. S.C. Dep't of Highways & Pub. Transp.*, 301 S.C. 35, 37, 389 S.E.2d 646, 648 (1990) (stating if the injury is permanent, the plaintiff has a single cause of action that cannot be split; however, if the cause of the injury is abatable, each injury gives rise to a new cause of action). Thus, defamatory statements and conduct occurring on or after September 17, 2013, are actionable in this case; and the statute of limitations is not a complete bar to Paradis' defamation claim.

C. Defamation is Sufficiently Pled.

The Circuit Court additionally granted dismissal on the grounds that Paradis did not sufficiently plead her defamation claim. The Circuit Court relied on a *per curiam* decision interpreting Virginia law, *Pagano v. Martin*, in support of its conclusion that Paradis had failed to plead third party

publication. (R. pp. 8-9); (*citing, Pagano*, 397 F.2d 620 (1968)). *Pagano* concerned an allegation of libel solely related to a performance evaluation. This case, somewhat similarly, is partially related to Paradis placement on two full-year formal performance evaluations; however, Paradis has sufficiently pled that her placement on the SAFE-T evaluation, termination and grounds for the same were published to unprivileged co-workers. (R. p. 21 ¶21). This case, with respect to publication, is more akin to the Court of Appeals recent decision in *McBride v. School District of Greenville County*. 389 S.C. 546, 562, 698 S.E.2d 845, 853 (Ct. App. 2010). *McBride* concerned a publication by a high school principal to appellant/plaintiff's (a teacher) co-worker that appellant/plaintiff stole school property. *Id.* This Court reasoned, in *McBride*, that "in South Carolina, an employee's statement to another employee is a 'publication' when the privilege of the employees' common interest is abused." *Id.* Likewise, here, statements and actionable insinuations that Paradis was incompetent at her job to co-workers can be considered unprivileged. Paradis' Complaint sufficiently pleads third party publication of the defamatory insinuation that she was unfit in her profession by the Respondent District and Respondent Charter School, through the Respondent Charter School's administration. (R. pp. 21-23 ¶¶ 21, 23-32). The same constitutes actionable defamation, and the Circuit Court's decision to the contrary is reversible.²

II. PARADIS SUFFICIENTLY PLED SPECIAL DAMAGES, AND THE RESPONDENTS ARE NOT IMMUNE FROM SUIT.

Civil conspiracy requires: (1) A combination of two or more persons, (2) for the purpose of injuring the plaintiff, which (3) causes the Plaintiff special damage. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E. 2d 91, 95 (Ct. App. 1989). A plaintiff needs to show "additional acts in furtherance of the conspiracy" to establish the first two elements. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981) The third element, special damages, intends to prevent a

² Assuming *arguendo*, that Paradis' allegations of defamation were insufficient she should have been given leave to amend to correct any pleading deficiencies as discussed in § 3, *infra*.

double recovery. *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 610, 538 S.E.2d 15, 31 (Ct. App. 2000); *See Also, Anthony v. Ward*, 336 Fed. Appx. 311, 318, (C.A.4 S.C. (2009)) (interpreting South Carolina civil conspiracy law: “The case law makes clear that the concern is with the plaintiff receiving a double recovery”).

The Circuit Court dismissed Appellant’s claim for civil conspiracy against Respondents Bohnstengel and Spann (Collectively “Individual Respondents”) for want of special damages and on the grounds of intracorporate immunity. Paradis sufficiently alleged special damages, and the Individual Respondents are not immune from suit.

A. Special Damages are Sufficiently Alleged

“Special damages must be alleged in the complaint to avoid surprise to the other party.” *Allegro, Inc. v. Scully*, No. 2014-002055, 2016 WL 4474336, at *4 (S.C. Aug. 24, 2016); *citing, Sheek v. Lee*, 289 S.C. 327, 329, 345 S.E.2d 496, 497 (1986). The primary consideration with respect to special damages, prevention of a double recovery, requires that damages for a conspiracy be distinct from those sought on a plaintiff’s other claims. *See, Allegro, Inc.*, 2016 WL 4474336, at 6 (Pleicones, *dissenting*) (“In *Todd*, the Court created a new rule of pleading for civil conspiracy claims, holding that the plaintiff in a civil conspiracy action must allege damages different from those alleged in any other of her tort causes of action.”) Paradis alleged that she suffered the economic loss of her income and reputational harm as a result of her defamation claim. (R. p. 23 ¶ 32). Paradis alleged that she was blacklisted, ostracized and incurred the costs and fees of prosecuting this action as the result of her civil conspiracy claim. (R. p. 24 ¶ 36, and prayer for relief).

Paradis’ civil conspiracy damages are distinct in substance and form from her defamation damages. *See, Grady v. Spartanburg Sch. Dist. Seven et. al.*, No. 7:13-CV-02020-GRA, 2014 WL 1159406, at *14 (D.S.C. Mar. 21, 2014) (“Plaintiff has alleged that these emotional damages came from being ostracized from her peers, distinct from the emotional damages of losing her job”); *Austin v.*

Torrington Co., 810 F.2d 416, 421 (4th Cir. 1987) (“Rather, to effectuate a recovery under a blacklisting theory, the plaintiff must prove that there was a blacklist, a combination of employers who exchanged the information contained on the blacklist, and a willful or malicious use of that blacklist by one or more of the members of the combination, with resultant injury to the plaintiff.”) (interpreting South Carolina Law); and, *Benedict Coll. v. Nat'l Credit Sys., Inc.*, 400 S.C. 538, 548-49, 735 S.E.2d 518, 523 (Ct. App. 2012) (“The civil conspiracy claim then explicitly incorporates that assertion and limits the special damages it seeks to ‘the costs and attorney’s fees associated with the defense of [the College]’s allegations.’ . . . NCS does not assert amorphous or unlimited grounds for special damages. The language provides sufficient specificity . . . [as to the] alleged special damages are being sought.”). The Circuit Court held that Paradis’ “alleged damages of being blacklisted and ostracized are simply a re-wording of the ‘injury to her professional reputation.” This reasoning constitutes a reversible inference in favor of the moving party. See, *Williams*, 553 S.E.2d at 499. Paradis sufficiently pled damages distinct from her defamation damages, and she satisfies the special damages prong of the civil conspiracy analysis.

Moreover, civil conspiracy is the only claim upon which Paradis seeks damages from Individual Respondents; thus, even if Paradis’ damages were duplicative, the special damages rule is not applicable here. See, *Allegro, Inc.*, fn. 6. Chief Justice Pleicones, dissenting in the Court’s August 24, 2016 decision in *Allegro*, reasoned “even if the Court were to preserve the *Todd* rule, the sole claim asserted against petitioner Corbin was civil conspiracy, and thus as to him the ‘special damages’ rule created by *Todd* [*v. S.C. Farm Bureau Mut. Ins. Co.*] does not apply.” Notably Chief Justice Pleicones dissent in *Allegro* (joined in concurrence by Justice Beatty) concerned whether or not special damages should even be an element in the civil conspiracy analysis; the *Allegro* majority did not reject Pleicones’ position on this point, but observed that *Allegro*, a 12 year old case, was not

the appropriate vehicle to reverse *Todd*. *Id.* at Fn. 3. This Court need not address the propriety of the special damages element, as Paradis properly and sufficiently pled special damages.

B. The Individual Respondents are not immune from Suit.

Civil conspiracies between the employees of a principal and an agent are recognized in South Carolina where the employees and agents act outside of the scope of their employment. *See, Anthony*, 336 Fed. Appx 311. (unpublished); *citing, McMillan v. Oconee Memorial Hospital, inc.*, 367 S.C. 559, 565, 626 S.E.2d 884, 886 (2006). Although, the acts of an entity's employees and agents are usually considered the acts of an entity; where those acts fall outside of the scope of employment or agency, the employees and agents may be liable for civil conspiracy. *Anthony*, 336 Fed. Appx 311; *See also, Pridgen v. Ward*, 391 S.C. 238, 246, 705 S.E.2d 58, 63 (Ct. App. 2010); *see also, Crittenden v. Thompson-Walker Co., Inc.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App. 1986); (*holding*, "On the other hand, if 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").

This Court, in *Pridgen* – regarding intracorporate immunity and employee scope, found that “the evidence in the record creat[ed] more than one reasonable inference as to whether the [individual defendants] acted outside the scope of their employment” and “the jury could infer from the evidence presented that the [individual defendants] actions were personally, not professionally, motivated, and were wholly disconnected from the business of their employer. *Pridgen*, 391 S.C. at 245, 705 S.E.2d at 62-63. Paradis alleged that the individual respondents were personally motivated to cause her harm. (R. pp. 18, 23 ¶¶ 9, 34-35). Paradis alleged that the individual respondents placed her on the SAFE-T evaluation on the basis of personal, not professional, motivations. (R. p. 23 ¶ 35). Such conduct is not reasonably inferred to be within the scope of the Individual Respondents’ employment nor is it within the furtherance of the Respondent Charter School and Districts’ mission. *See, Williams*, 553 S.E.2d at 499 (inferences to be construed in favor of non-movant); and,

Crittenden, 341 S.E.2d at 387 (master-servant analysis). Appellant has sufficiently alleged that the Individual Respondents acted personally, outside of the course and scope of their employment, to harm her; thus, the Individual Respondents are not entitled to intra-corporate immunity.³

Paradis has pled that the Individual Respondents acted with a personal motivation to harm her, and that she suffered special damages as a result of the same. The Circuit Court's holding to the contrary is reversible.

III. APPELLANT, ASSUMING ARGUENDO HER PLEADINGS ARE DEFICIENT, IS ENTITLED TO LEAVE TO AMEND.

Appellant requested, that should the Court find her pleadings deficient, she be given leave to amend. (R. p. 112-13); (R. pp. 46-47, 22:20-23:17). "When a plaintiff is not given the opportunity to file and serve an amended complaint, but is left with no choice but to appeal after dismissal of her case with prejudice, an appellate court which affirms the dismissal may modify the lower court's order to find the dismissal is without prejudice. *Spence v. Spence*, 368 S.C. 106, 130, 628 S.E.2d 869, 881 (2006). The law is well settled "that leave to amend a pleading should be denied *only when* the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile." *Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir. 1999) (Regarding Fed. R. Civ. P. 15). The South Carolina Rules of Civil Procedure should "be construed to secure the just, speedy, and inexpensive determination of every action." Rule 1, SCRCP (emphasis added). Should this Court find that Paradis' pleadings are deficient on either of her claims, justice is served by remanding this matter with leave to amend; and setting the statute of

³ Moreover, placing Paradis on a formal SAFE-T evaluation based on the same year's performance where she succeeded on her informal goals based evaluation may circumvent the statutes and regulations underlying teacher evaluation. *See*, S.C. Code Ann. § 59-26-30; S.C. Code Ann. § 59-26-40(j); S.C. Code of Regs. 43-205.1; and South Carolina State Board of Education Expanded ADEPT Guidelines, Office of Teacher Evaluation, Division of Educator Effectiveness (2015) ("ADEPT Guidelines"). Pursuant to the Guidelines governing evaluations, Teachers are placed on a formal evaluation or SAFE-T evaluation plan when they fail to meet the requirements of their informal Goals Based evaluation. (ADEPT Guidelines p. 27). Thus, Paradis was placed on a SAFE-T Evaluation contravening the regulations and guidelines underlying teacher evaluations. Therefore, not only did Paradis sufficiently allege that the Individual Respondents acted factually outside the course and scope of their employment; the individual respondents likewise acted outside of the lawful course and scope of their employment. *See, Id.; See also*, (R. pp. 18-19 ¶¶ 7, 12, 13, fn. 1).

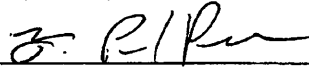
limitations on any amended claim in accord with the original statute of limitations when this Complaint was filed.

CONCLUSION

Appellant Liesel Paradis respectfully asks this Honorable Court to Reverse the holding of the Circuit Court and Remand this case for the reasons discussed above.

Respectfully Submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2016-001337

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SC Court of Appeals

Leisel Paradis Appellant

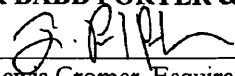
v.

Charleston County School District, James Island Charter High School, Robert Bohnstengel, and
Stephanie Spann, in their individual capacities, ... Respondents

CERTIFICATE OF COUNSEL

I hereby certify, as counsel of record in the above-captioned case, that the Final Brief and
Reply Brief submitted herewith contains no matter which is irrelevant to the appeal as required
by Rule 211.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge
Charleston County

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Case No. 2015-CP-10-05093
Appellate Case No. 2016-001337

Leisel Parais Appellant

Charleston County School District, James Island Charter High School, Robert
Bohnstengel, and Stephanie Spann, in their individual capacities Respondents

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court properly dismiss Appellant's claim for defamation where the Respondents Charleston County School District and James Island are subject to sovereign immunity; Appellant's claim is barred by the statute of limitations; and Appellant fails to state a cause of action for defamation?
2. Did the trial court properly dismiss Appellant's claim for civil conspiracy where Appellant failed to plead special damages with specificity and where the conduct alleged of Respondents Robert Bohnstengel and Stephanie Spann was done in the scope of their employment?
3. Did the trial court properly deny Appellant leave to amend her Complaint?

STATEMENT OF THE CASE

This is an appeal from the Orders of the Circuit Court granting Respondents' Motions to Dismiss and denying Appellant's Motion to Reconsider. (R. pp. 3-13).

The within action was filed by Appellant on September 17, 2015, in Charleston County Court of Common Pleas alleging causes of action for defamation against James Island Charter School (Charter School) and Charleston County School District (District) and for civil conspiracy against Robert Bohnstengel (Bohnstengel) and Stephanie Spann (Spann).

On November 30, 2015, all Respondents filed a Motion to Dismiss Plaintiff's Complaint. The Charter School and Spann filed an Amended Motion to Dismiss on March 18, 2016, and the District and Bohnstengel filed an Amended Motion to Dismiss on March 21, 2016. The issues were fully briefed by all parties, and a hearing was held on the Motions to Dismiss on March 30, 2016. After considering the written and oral arguments of counsel, Judge Nicholson issued his Order dated April 15, 2016, granting Respondents' Motions. Appellant filed a Motion to Reconsider on April 29, 2016, and Respondents filed a joint Response to Plaintiff's Motion to Reconsider on May 12, 2016. Judge Nicholson denied Appellant's Motion to Reconsider by Order of May 19, 2016.

FACTS¹

Appellant was an employee of the District and taught English at the Charter School. (R. p. 17, ¶ 1). Bohnstengel is the former principal of the Charter School, and Spann is an Assistant Principal there (R. p. 18, ¶¶ 4, 5). Appellant alleges that Bohnstengel became angry with her after she informed him she wanted to file a police report regarding a violent

¹ The facts recited herein are taken from Appellant's Complaint for purposes of this appeal.

and harassing assault she suffered from a student in her classroom during the 2012-13 school year. (R. p. 18, ¶¶ 8, 9). Shortly thereafter, Bohnstengel notified Appellant that she was being placed on SAFE-T/ADEPT evaluation for the following school year in accordance with a prior meeting between them (R. p. 19, ¶ 12). Appellant was shocked by this notification because she had not previously met with Bohnstengel, and she had met all of her goals of her GBE (Goals Based Evaluation) for the 2012-13 school year. (R. p. 19, ¶¶ 11, 13).

Despite her efforts to reverse Bohnstengel's decision, Appellant was subject to evaluation for the 2013-14 school year. (R. p. 19, ¶ 14). Bohnstengel was one of three evaluators for Appellant; however, he was terminated before Appellant's evaluation was complete (R. pp. 19-20, ¶¶ 14, 15). He was then replaced by Maureen Jessup for the remainder of the evaluation period. (R. p. 20, ¶ 16). Appellant failed the evaluation for the 2013-14 and was again placed on evaluation for the 2014-15 school year. (R. p. 20, ¶ 17).

Appellant was concerned that she would not be treated fairly in the second evaluation because Spann, who had been on the prior evaluation team, would again serve as one of her three evaluators. (R. pp. 19-20, ¶ 19). According to Appellant, during the second year of evaluation, Spann changed the requirements of her evaluation, causing Appellant to be confused. (R. pp. 19-20, ¶ 19). Appellant met with her mentor, Charity Scruggs, almost daily. (R. pp. 19-20, ¶¶ 18, 19). Ms. Scruggs noted that Appellant was under strain, but that she was doing all she could to please the evaluators. (R. pp. 19-20, ¶ 19). Despite her efforts, Appellant failed the evaluation during the second year, scoring lower at the end of the year than she had at the beginning. (R. p. 20, ¶ 20). All of Appellant's peers and colleagues were aware that she was being evaluated and saw the

physical and emotional toll it took on Appellant. (R. p. 20, ¶ 21). Appellant was terminated because she failed the evaluation for two consecutive years. (R. p. 20, ¶ 22). Appellant, thereafter, exhausted her administrative remedies (R. p. 20, ¶ 22).²

Plaintiff's Complaint alleges a cause of action for defamation of character against the District and the Charter School, as well as a cause of action against Bohnstengel and Spann for civil conspiracy.

² The administrative remedies available to a teacher are governed by the South Carolina Teacher Dismissal Act. Specifically, a teacher who has been terminated exhausts her administrative remedies when she requests a hearing before the District Board of Trustees and receives a determination from the Board as to "whether the evidence showed good and just cause" for the dismissal. S.C. Code Ann. § 59-25-470. Furthermore, the "teacher has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present *any and all* defenses to the charges." Id. § 59-25-470 (emphasis added). After considering the evidence, both the Board of the Charter School and the Board of the District upheld the termination of Appellant.

ARGUMENT

I. APPLICABLE STANDARD OF REVIEW

A Rule 12(b)(6) motion to dismiss should be granted when the pleadings, construed in the light most favorable to the non-moving party, fail to allege sufficient facts to state a cause of action. Rule 12(b)(6), SCRCP; Haskell Co. v. Morgan, 274 S.C. 261, 262 S.E.2d 737 (1980). As stated in DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293 (1981):

A [motion to dismiss] admits the facts well-pleaded in the complaint but does not admit the inferences drawn by the plaintiff from such facts. In short, a [motion to dismiss] a complaint does not admit conclusions of law pleaded therein.

274 S.E.2d at 296; Carolina Winds Owners' Ass'n v. Joe Harden Builder, Inc., 297 S.C. 74, 374 S.E.2d 897, 899 (Ct. App. 1988) ("A motion under Rule 12(b)(6) . . . admits the well pleaded facts in the complaint, but it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law.") An allegation of a mere legal conclusion is insufficient to state a cause of action. Jones v. Gilstrap, 288 S.C. 525, 343 S.E.2d 646 (1986); Russell v. City of Columbia, 301 S.C. 117, 390 S.E.2d 463 (Ct. App. 1989), rev'd on other grounds, Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991) ("The court must take well pleaded factual allegations as true. However, allegations which are conclusory rather than factual should be disregarded.")

II. THE TRIAL COURT CORRECTLY RULED THAT APPELLANT'S DEFAMATION CLAIM SHOULD BE DISMISSED AS A MATTER OF LAW.

Appellant claims she was slandered by allegedly false, oral and written statements made against her by "agents and servants of [the District and Charter School] acting in the course and scope of their employment." (R. pp. 21-22, ¶¶ 25-26). The trial court correctly ruled her allegations fail as a matter of law and are subject to dismissal because: (1) the

District and Charter School are entitled to sovereign immunity; (2) Appellant's claim for defamation is barred by the applicable statute of limitations; and (3) Appellant's claim fails to facts sufficient to constitute a cause of action for defamation

A. Appellant's claim for defamation against Respondents District and Charter School was properly dismissed because they are subject to sovereign immunity.

Appellant's claim for defamation is subject to the South Carolina Tort Claims Act (SCTCA), which provides the sole remedy available to a plaintiff for civil wrongs alleged to have been committed by a government agency. Hawkins v. City of Greenville, 358 S.C. 280, 292, 594 S.E.2d 557, 563 (Ct. App. 2004). The District and Charter School are each a governmental entity subject to the protections of the SCTCA. S.C. Code Ann. § 15-78-30(d). Although the SCTCA waived absolute immunity for torts committed by government actors, it limited liability under certain circumstances. S.C. Code Ann. § 15-78-40 (Supp. 2003). Specifically, in adopting the SCTCA, the General Assembly continued the grant of immunity to the political subdivisions of the State and their employees "while acting within the scope of official duty for any tort except as waived by this chapter." S.C. Code Ann. § 15-78-20(b). The waiver of immunity under the SCTCA is "based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty." S.C. Code Ann. § 15-78-20. "An employee of a governmental entity who commits a tort while acting within the scope of his official duty is *not* liable therefor" unless "it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. S.C. Code Ann. § 15-78-70(a) and (b).

When examining a provision which potentially limits the liability of a government agency, the Court should liberally construe the portion of the Act in favor of the government defendant. S.C. Code Ann. § 15-78-20(f). Hawkins, 358 S.C. at 292, 594 S.E.2d at 563. School officials are not liable for allegedly defamatory conduct performed in the discharge of their official duties. De Levay v. Richmond Cty. Sch. Bd., 284 F.2d 340, 340 (4th Cir. 1960) Where a government official is entitled to immunity, the defense is available, regardless of his rank or his motives, and even when his conduct is within the "outer perimeter of his line of duty." Green v. Cauthen, 379 F. Supp. 361, 374 (D S.C. 1974) While De Levay and Green predate the SCTCA, they are directly in keeping with the intent of the General Assembly to limit the waiver of immunity for torts committed by government agents acting within the scope of their duty and are compellingly applicable here.

Appellant's claim for defamation appears to be based on the allegations that "[a]ll of the [her] peers and colleagues knew she was undergoing the evaluation process" and that "[b]y virtue of placing and holding [her] on the evaluation process for two years – which was widely known at JCHS – [her] credibility as a teacher was greatly diminished." (R. pp. 21-22, ¶¶ 21, 28). Thus, the gravamen of Appellant's cause of action is that the District and Charter School defamed her when they placed her on formal evaluation for two consecutive school years.³

However, the District and Charter School are entitled to absolute immunity for placing Appellant on formal evaluation because assessing teacher competence is a statutory

³ Although Appellant attempts to broaden the scope of Respondent's alleged misconduct to include her termination, the allegations are murky and not well plead as to the exact nature of the defamatory conduct and its publication. Appellant's Brief, p. 9.

duty of all school districts in South Carolina. See S.C. Code Ann. § 59-26-40 (“A teacher employed under a continuing contract must be evaluated on a continuous basis. At the discretion of the local district and based on an individual teacher’s needs and past performance, the evaluation may be formal or informal.”) By placing Appellant on formal evaluation, the District and Charter School were each clearly acting within the scope of its official, statutorily-mandated duties, such that there is no liability under the SCTCA. Even Appellant acknowledges in her Complaint that the allegedly false statements and actions were made by agents of the District and Charter School “while acting within the course and scope of their employment.” (R. p. 22, ¶¶ 29, 31). Furthermore, aside from the conclusory allegations set forth in her causes of action, Appellant has failed to set forth any specific factual allegations in her Complaint that any of Respondents’ agents harbored malice toward her or intended her harm, which is necessary to take Respondent’s outside the protections of the SCTCA. Accordingly, the trial court properly dismissed Appellant’s claim for defamation consistent with the state’s grant of sovereign immunity to the District and the Charter School under the circumstances present here.

However, even if this Court were to find the General Assembly intended to waive immunity for school agents evaluating employee performance, the SCTCA nonetheless clearly states that a “government entity is not liable for loss resulting from ... the exercise of discretion or judgment by the governmental entity or employee or the performance [of] any act or service which is in the discretion or judgment of the governmental entity or employee...” S.C. Code Ann. § 15-78-60(5).

As the trial court aptly noted, although school districts have a statutory duty to assess teachers in its employ, they have the discretion to evaluate teachers on a formal

[SAFE-T] or informal basis based on their judgment of the “teacher’s needs and past performance.” S.C. Code Ann. § 59-26-40; (R. p 7). Likewise, school officials can and must exercise discretion and judgment when deciding to terminate a teacher. Therefore, because the SCTCA shields the Respondents from liability for the decision to place Appellant on formal evaluation, the trial court did not err in dismissing Appellant’s cause of action for defamation.

B. The trial court correctly determined Appellant’s claim for defamation is barred by the applicable statute of limitations.

A cause of action for defamation must be brought within two years of the time the claim arose Jones v. City of Folly Beach, 326 S.C. 360, 368, 483 S.E.2d 770, 774 (Ct. App. 1997) (citing S.C. Code Ann. § 15-3-550 (Supp. 1995)). The claim “accrues at the moment when the plaintiff has a legal right to sue on it.” Id. Additionally, any claim for damages under the SCTCA must be brought within two years of the loss or when it should have been reasonably discovered. S.C. Code Ann. § 15-78-100(a). Although the discovery rule is not generally applicable to a claim for defamation, it may apply where the plaintiff seeks redress from a government agency. Logan v. Cherokee Landscaping & Grading Co., 389 S.C. 611, 618, 698 S.E.2d 879, 883 (Ct. App. 2010); Harris v. Tietex Int’l Ltd., 417 S.C. 533, 790 S.E.2d 411, 416 (Ct. App. 2016), reh’g denied (Sept. 23, 2016). Under the discovery rule, a plaintiff must bring an action with some degree of promptness once she has notice that a claim exists, even if she fails to comprehend the full extent of her injury. Dean v. Ruscon Corp., 321 S.C. 360, 363- 64, 468 S.E.2d 645, 647 (1996).

Appellant alleges the District and Charter School defamed her “[b]y virtue of *placing* and holding [her] on the evaluation process for two years” (R. p. 21, ¶ 28) (emphasis added). According to her Complaint, Appellant was notified that she was being

placed on formal evaluation shortly after her meeting with Richard Glickman in March of 2013, and she was, in fact, subject to evaluation beginning with the 2013-14 school year. (R. p. 19, ¶¶ 11, 12, 14). Thus, Appellant's cause of action for defamation arose as early as March of 2013, or as late as August 2013, when the 2013-14 school year began. However, Appellant did not commence this litigation until September 22, 2015, after the expiration of the two-year statute of limitations for defamation claims and claims under the SCTCA. Therefore, as the trial court correctly held, her claim for defamation is time-barred.

Appellant's argument that the "continuous accrual" doctrine should apply to save her charge of defamation is unavailing. First, this doctrine has not been applied in South Carolina to a cause of action for defamation or to a claim under the SCTCA, and none of the cases cited by Appellant involve a tort remotely similar to a claim for defamation. Moreover, Appellant's own rationale supports the conclusion of the trial court that her claim is time-barred. In Cutchin v. S.C. Dep't of Highways & Pub. Transp., 301 S.C. 35, 37, 389 S.E.2d 646, 648 (1990), a case upon which Appellant relies, the South Carolina Supreme Court distinguished between the nature of the harm to the plaintiff to determine whether the statutory limitations period could arguably begin to run from an injury subsequent to the initial injury. There, the Court noted that where the harm to the property owner plaintiff could have been abated by the defendant's installation of adequate pipelines, a second flooding of the plaintiff's property triggered a new statute of limitations. Id. However, "[i]f the injury ... is of a permanent character, then it follows that the plaintiff has a single cause of action which cannot be split." Id. (quoting Webb v. Greenwood County, 229 S.C. 267, 277, 92 S.E.2d 688, 692 (1956)). Unlike the Cutchin plaintiff,

Appellant's alleged damages⁴ are of a permanent indivisible nature.

C. Because Appellant does not state a claim for defamation, dismissal is proper under SCRCP 12(b)(6), and the order of the trial court should be affirmed.

Even if the District and Charter School were subject to liability, Appellant's claim for defamation is nonetheless subject to dismissal against both Respondents because her complaint fails to state facts sufficient to constitute a cause of action for defamation. See Rule 12(b)(6), SCRCP.

To establish a cause of action for defamation, the Appellant must show: "(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." Erickson v. Jones St. Publishers, L.L.C., 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006).

In Pagano v. Martin, 397 F.2d 620 (4th Cir. 1968), the Fourth Circuit Court of Appeals addressed a similar situation, in which the alleged defamatory statements occurred in connection with a report that was issued pursuant to an employer's authorized duties. In that case, the alleged libel appeared in a performance evaluation report issued by the defendants, who were the plaintiff's superior officers on the USS Robert A. Owens, a naval destroyer ship. Pagano, 397 F.2d at 620. The court acknowledged that the evaluation report "downgraded [the plaintiff] sharply and recommended he not be re-enlisted in the future." Id. In affirming the district court's dismissal of the libel claim on the defendants'

⁴ As a result of Respondent's alleged defamation, Appellant claims she has suffered loss of job, income, and earning capacity; sustained embarrassment, humiliation, damage to her reputation, emotional distress, and pain and suffering and loss of sleep and self-confidence. (R. p. 23, ¶ 32).

motion for summary judgment, the Court of Appeals noted: "The report authorized by the Bureau of Naval Personnel Manual, was made by the defendant officers *as part of their official duties*. With the trial court, we think the suit, as a matter of law, cannot be maintained." Id. (emphasis added).

Here, the Complaint is devoid of factual allegations that actually support Appellant's contention that there was an unprivileged, defamatory communication made to a third party. The alleged defamatory material is nothing more than a negative evaluation of Appellant's professional performance, and both the District and the Charter School are not only authorized, but mandated by law, to perform teacher evaluations, some of which, by their very nature, will result in substandard reviews.

Appellant takes issue with the trial court's finding that she did not sufficiently state a claim for defamation pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure because: she plead "that her placement on the SAFE-T evaluation, termination and grounds for same were published to unprivileged coworkers; and she plead a "third party publication of the defamatory *insinuation* that she was unfit in her profession by the Respondent District and respondent Charter School, through the Respondent Charter School's administration." Appellant's Brief, p. 11 (emphasis added). The paraphrase of these allegations, combined with Appellant's allegation that "[b]y virtue of placing and holding Plaintiff on the evaluation process for two years – which was widely known – at JCHS – Plaintiff's credibility as a teacher was greatly diminished" seemingly place Appellant's claim squarely in the context of a defamation case based on an open and formal evaluation. (R. p. 22, ¶ 29). When Appellant did not pass for a second year, she was terminated. (R. p. 21, ¶ 22). Nowhere in Appellant's complaint does she identify who

actually published or made the alleged defamatory statements, actions or insinuations, the nature of the publication, or to whom the statements, actions or insinuations were made.⁵ Without those facts to support Appellant's allegations, her claim must fail

In deciding a 12(b)(6) motion to dismiss, the court cannot consider "the inferences drawn by the plaintiff from [well pleaded] facts" and must disregard "allegations which are conclusory rather than factual...." DeBerry, 275 S.C. at 574 , 274 S.E.2d at 296; Russell, 301 S.C. at 119, 390 S.E.2d at 164. Merely pleading a defendant "made and published statements that insinuated [an employee] was unfit in her business and profession" does not provide the level of specificity necessary to support a claim for defamation. McNeil v. S.C. Dep't of Corr., 404 S.C. 186, 195, 743 S.E.2d 843, 848 (Ct. App. 2013). Accordingly, the trial court properly dismissed Appellants cause of action for defamation.

III. THE TRIAL COURT CORRECTLY RULED THAT APPELLANT'S CIVIL CONSPIRACY CLAIM SHOULD BE DISMISSED AS A MATTER OF LAW.

Appellant's Complaint alleges that Bohnstengel and Spann conspired against her and targeted her for an "unwarranted and invasive evaluation," and that as a result, she suffered special damages in the form of "being blacklisted and ostracized from the profession of education." (R. p. 23-24, ¶¶ 35-36). However, Appellant's claim for civil conspiracy fails as a matter of law and is subject to dismissal because: (1) Appellant fails to sufficiently and/or specifically state any special damages beyond those alleged in her other cause(s) of action; and (2) the actions of Bohnstengel and Spann that form the

⁵ Reciting the elements of her defamation claim, Appellant alleges: "By the false statements and actions made against Plaintiff by agents and servants of Defendant District and Defendant JCHS acting in the course and scope of their employment, Defendant District and Defendant JCHS defamed Plaintiff, and the defamation was published to Plaintiff's colleagues, students, and possibly others, including parents" (R. p 22, ¶ 29).

apparent basis of Appellant's conspiracy claim were all done within the course and scope of their employment, such that no actionable conspiracy exists.

A. The trial court's order of dismissal should be affirmed because Appellant fails to state with specificity the special damages she sustained, which is an essential element of the claim.

"A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing *special damage* to the plaintiff." Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 324, 701 S.E.2d 39, 46 (Ct. App. 2010) (quoting McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006) (emphasis added)). Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage. Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822, 831 (Ct. App. 2012). "The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to a common design." Cricket Cove Ventures, 390 S.C. at 324, 701 S.E.2d at 46. To establish a conspiracy, "evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005) (citation omitted).

Rule 9(g) provides that "[w]hen items of special damage are claimed, they shall be specifically stated." Rule 9(g), SCRCP.

This rule is based upon the distinction between general and special damages. General damages are inferred by the law itself, as they are the immediate, direct, and proximate result of the act complained of. In contrast, special damages are not implied by law because they are the natural, but not the necessary or usual, consequence of the defendant's conduct. Thus, special damages must "be specifically stated" to avoid surprise to the other party.

Benedict Coll. v. Nat'l Credit Sys., Inc., 400 S.C. 538, 548, 735 S.E.2d 518, 523 (Ct. App. 2012) (citations omitted). Where a party alleges the same damages under a conspiracy claim as she does under the other causes of action, such allegations are insufficient to establish special damages. Gordon, 397 S.C. at 136, 723 S.E.2d at 831-32 (Ct. App. 2012); Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009) ("If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed."). To properly plead special damages, the plaintiff must set forth the necessary elements to establish the damages, as well as allege facts establishing the cause of the special damages and how they occurred. 25A C.J.S. Damages § 278

The only mention of special damages in Appellant's Complaint, beyond the conclusory statement that she has sustained them generally, is that she has been ostracized or blacklisted from the profession of education. Yet, Appellant fails to plead *any* specific facts to support such an assertion, such as the elements of the damages, the cause of the damages or how they arose.⁶ In fact, there is no allegation that she made any effort, unsuccessful or not, to obtain any other employment in the field of education. Furthermore, the alleged damages of being blacklisted and ostracized are simply a rewording of the "injur[y] to her professional reputation" that are the claimed damages under

⁶ Appellant acknowledges in her Brief that, in order to recover damages for blacklisting, she must establish "there was a blacklist, a combination of employers who exchanged the information contained on the blacklist, and a willful or malicious use of that blacklist by one or more of the members of the combination, with resultant injury to [her]." Brief of Appellant, p. 13, (quoting Austin v. Torrington Co., 810 F.2d 416, 421 (4th Cir. 1987)). However, Appellant has failed to plead any of the elements she acknowledges she must prove.

her defamation cause of action. See (R. p. 22-23, ¶¶ 30-32). Therefore, Appellant fails to properly plead or “specifically state” any special damages beyond those damages alleged under other causes of action, such that her conspiracy claim fails as matter of law.

B. The trial court correctly held that Appellant’s civil conspiracy claim is inactionable because the conduct alleged of Bohnstengel and Spann was done in the scope of their employment.

A corporation or municipal entity can act only through its directors, officers, agents, and employees. See Anvar v. Greenville Hosp. Sys., No. 2007-UP-004, 2007 WL 8324255, at *5 (S.C. Ct. App. Jan. 10, 2007). Thus, where the actions of an entity’s agents and employees were all performed while acting within the course and scope of their authority, a conspiracy claim is barred by the intracorporate conspiracy doctrine. See id. (citing McMillan v. Oconee Mem’l Hosp., Inc., 367 S.C. 559, 564-65, 626 S.E.2d 884, 886-87 (2006) (holding a civil conspiracy cannot exist in the context of a principal-agent relationship where the individuals are all acting only for the corporation and not for any personal purpose of their own)); see also Cameron v. Church, 253 F. Supp. 2d 611, 623 (S.D.N.Y.2003) (stating “[t]he intracorporate conspiracy doctrine provides that the officers, agents and employees of a single corporate or municipal entity, each acting within the scope of his or her employment, legally are incapable of conspiring together”). “[J]ust as it is not legally possible for an individual to conspire with himself, it is not possible for a single legal entity consisting of the corporation and its agents to conspire with itself.” McAndrew v. Lockheed Martin Corp., 206 F.3d 1031, 1036 (11th Cir. 2000).

In Cricket Cove Ventures, the South Carolina Court of Appeals stated:

In McMillan, our Supreme Court limited this “intracorporate conspiracy” doctrine to persons acting within the scope of their employment, 367 S.C. at 564-65, 626 S.E.2d at 887. Other jurisdictions have similarly limited the doctrine. See ePlus Tech., Inc. v. Aboud 313 F.3d 166, 179 (4th Cir. 2002)

("[T]he intracorporate immunity doctrine does not apply where a corporate officer has an independent personal stake in achieving the corporation's illegal objectives." (quoting *Greenville Pub. Co. v. Daily Reflector, Inc.*, 496 F.2d 391, 399 (4th Cir. 1974))); *McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031, 1036 (11th Cir. 2000) ("Simply put, under the doctrine, a corporation cannot conspire with its employees, and its employees, *when acting in the scope of their employment*, cannot conspire among themselves.") (emphasis added); *Garza v. City of Omaha*, 814 F.2d 553, 556 (8th Cir. 1987) ("While it is true that a corporation cannot conspire with itself, an intracorporate conspiracy may be established where individual defendants are also named and those defendants act outside the scope of their employment for personal reasons.").

Cricket Cove Ventures, 390 S.C. at 325-26, 701 S.E.2d at 46-47.

Appellant's allegations against Bohnstengel and Spann all relate to conduct that occurred while they were acting within the course and scope of their employment as administrators at the Charter School. Appellant's bald allegations in the civil conspiracy section of her Complaint that these Respondents "were able to specially inflict their evil agenda upon the [her] and did so *outside of the scope of their own employment*", (R. p. 23 ¶ 35) (emphasis added), are thinly-veiled and disingenuous assertions given the contention on the preceding page that the exact same conduct and actions were "made against [her] by agents and servants of [the District and Charter School] *acting in the course and scope of their employment*." (R. p. 22, ¶ 29) (emphasis added). At all times relevant to the allegations of the Complaint, the individual Respondents were acting as agents and employees of the District and Charter School, and Appellant fails to allege any facts to support a conclusion to the contrary. Thus, the trial court's dismissal of Appellant's civil conspiracy cause of action should be upheld.

IV. EVEN IF THE COURT WERE TO FIND THE ONLY BAR TO APPELLANT'S CLAIMS ARE THAT HER PLEADINGS ARE DEFICIENT, SHE IS STILL NOT ENTITLED TO AMEND HER COMPLAINT.

As an initial matter, if the Court affirms the trial court's dismissal of Appellant's Complaint on the grounds that Respondents District and Charter School are subject to sovereign immunity or Appellant's defamation claim is time barred, and that the civil conspiracy claim is inactionable because the conduct alleged was done within Respondents' employment, then the issue of whether she be granted leave to cure any deficiencies in her Complaint is moot. However, even if the Court were to determine the only bar to the survival of Appellant's claims is her failure to properly plead them, she is still not entitled to amend her Complaint. Appellant accurately claims that "[w]hen a plaintiff is not given the opportunity to file and serve an amended complaint, but is left with no choice but to appeal after dismissal of her case with prejudice, an appellate court which affirms the dismissal may modify the lower court's order to find the dismissal is without prejudice." Spence v. Spence, 368 S.C 106, 130, 628 S.E.2d 869, 881 (2006). However, this course of action is appropriate only after "the plaintiff presents additional factual allegations or a different theory of recovery which, taken as true in a well-pleaded complaint, may state a claim upon which relief may be granted." Id.

In Appellant's Memorandum in Opposition to Motion to Dismiss and for More Definite Statement, she concludes by asking the trial court to allow her to amend her complaint. (R. p. 84). In her Rule 59(e) Motion to Reconsider, Appellant fails to present any new or clarified factual allegations which would demonstrate she is entitled to the relief sought. (R. pp. 111-117). Because any amendment would be an exercise of futility, Appellant's request to amend her complaint is properly denied. Edwards v. City of Goldsboro, 178 F.3d 231, 242 (4th Cir. 1999).

CONCLUSION

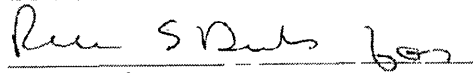
For the reasons stated, this Court should affirm the trial court's Order dismissing
Appellant's Complaint.

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December 29, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge
Charleston County

Case No. 2015-CP-10-05093
Appellate Case No. 2016-001337

Leisel Paradis Appellant,

v.

Charleston County School District, James Island Charter High School, Robert
Bohnstengel, and Stephanie Spann, in their individual capacities..... Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondents complies
with Rule 211(b) SCACR.

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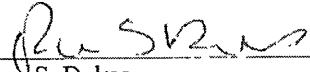
PROOF OF SERVICE

I do hereby certify that on December 29, 2016 I have served all counsel of record
in this action with a copy of the documents herein below specified by mailing a copy of
the same by United States mail, postage prepaid, to the following address:

Documents: **Respondents' Final Brief, Certificate of Counsel and
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Leisel Paradis Appellant

v.

Charleston County School District, James Island Charter High School, Robert Bohnstengel, and
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ARGUMENT

Respondents filed a response brief to Appellant's initial brief, received by this Court on November 9, 2016. There the Respondent District and Respondent Charter School maintain that they are immune from Appellant's defamation claim, that the defamation claim is brought outside of the statute of limitations, and that it is insufficiently pled. (Respondents' Brief pp. 5-13). Similarly Respondents Bohnstengel and Spann, with respect to civil conspiracy (the sole claim alleged against them,) maintain that special damages are not sufficiently pled, and that they are entitled to intracorporate immunity. (Respondents' Brief pp. 13-17). Last, Respondents argue that an amendment to Appellant's complaint would be futile. (Respondents' Brief pp. 17-18). Appellant Paradis respectfully replies to show this Court:

1. That governing and persuasive precedent does not support the District and Charter's School's sovereign immunity argument,
2. That the lion's share of the Defamation alleged occurred within the actionable statute of limitations,
3. That the District and Charter School has mischaracterized Paradis; defamation claim as insufficiently pled,
4. That the Individual Respondent's seek impermissible inferential support with respect to their special damages argument,
5. That Paradis sufficiently alleged a personal motive to harm her on the part of the Individual Respondents, and
6. That an amendment, if necessary, would not be futile.

Paradis, therefore, asks this Court to remand this case, and allow it to proceed to discovery.

- 1. The sovereign immunity argument, made by the District and Charter school, has no governing or persuasive precedential support.**

The only cases relied upon by the Respondent District and Respondent Charter School in support of their argument in favor of sovereign immunity are a 1960 per curium opinion of the

Fourth Circuit Court of Appeals, analyzing Virginia Law, and a 1974 decision by the District Court of South Carolina. (Respondents Brief p. 7); *citing*, *De Levay v. Richmond Cty. Sch. Bd.*, 284 F.2d 340, 340 (4th Cir. 1960); *and*, *Green v. Cauthen*, 379 F. Supp. 361, 374 (D.S.C. 1974). Both of these cases predate their states' tort claims act by over 10 years. Va. Code Ann. § 8.01-195.3 (West) (Originally Passed 1981); S.C. Code Ann. §§ 15-78-10 *et seq.* (1986). *De Levay* and *Green*, decided before South Carolina and Virginia abrogated their sovereign immunity, are not relevant to this Court's decision; rather this Court must look to the language of the South Carolina Tort-Claims Act (SCTCA) and the case law interpreting that law.¹

The Lower Court, as well as the Respondent District and Respondent Charter School, in addition to the case law distinguished above, solely relied upon § 15-78-20(b) as substantive support to find sovereign immunity. (R. pp. 6-7). The District and Charter School continue to rely, in part, on S.C. Code Ann. § 15-78-20(b). (Respondents' Brief p. 6). Their reliance is misplaced, and is akin to using only the first page of a book to comprehensively describe its contents. Section 15-78-20(b) is not an exception to the SCTCA's waiver to immunity; rather, it simply describes what the SCTCA does. Section 15-78-20(b) provides: "The General Assembly in this chapter intends to grant the State . . . while acting within the scope of official duty, immunity from liability and suit for any tort **except as waived by this chapter.**" (emphasis added). The SCTCA then broadly waives immunity at S.C. Code Ann. § 15-78-40: "The State . . . [is] liable for [its] torts in the same manner and to the

¹ Even if *De Levay* and *Green*, were persuasive a School District and Charter School are not "arms of the state," and are not subject to eleventh amendment sovereign immunity under prevailing constitutional law. *Eason v. Clark Cty. Sch. Dist.*, 303 F.3d 1137, 1145 (9th Cir. 2002) ("The district court erroneously concluded that the Clark County School District is an arm of the state, entitled to Eleventh Amendment immunity.") *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280-81, 97 S. Ct. 568, 573, 50 L. Ed. 2d 471 (1977) ("On balance, the record before us indicates that a local school board such as petitioner is more like a county or city than it is like an arm of the State. We therefore hold that it was not entitled to assert any Eleventh Amendment immunity from suit in the federal courts.")

same extent as a private individual under like circumstances, **subject to the . . . exemptions from liability and damages contained herein.**" (emphasis added)². Those exemptions are found within § 15-78-60; until now, the District and Charter School have not attempted to establish a § 15-78-60 exemption.

The Respondent District and Charter School have, for the first time here, argued pursuant to S.C. Code Ann. § 15-78-60(5) that they are entitled to discretionary immunity. (Respondent' Brief p. 8). That argument is not preserved for appeal, because it was not raised at the Court below. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.") Even if the District and Charter School's new § 15-78-60 argument were ripe for determination, discretionary immunity, an affirmative defense, is not a suitable basis for Rule 12(b)(6), SCRPC dismissal. "The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense." *Steinke v. S. Carolina Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999); *citing, Strange v. South Carolina Dep't of Highways and Pub. Transp.*, 314 S.C. 427, 445 S.E.2d 439 (1994). The Respondents cannot rely on an affirmative defense, within the standard at hand, to show that Paradis' defamation claim should be dismissed. *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001) ("The [Trial Court's Order] will not be sustained if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.") Here Paradis has alleged that the defamatory insinuations flowing from her placement, re-placement, and

² See also S.C. Code Ann. § 15-78-200 recognizing that governmental entities can be liable for torts committed in the scope of their official duty: "the 'South Carolina Tort Claims Act', is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty."

maintenance upon a SAFE-T evaluation, and her termination were pretextual and not based on the regular discretionary determinations of her supervisors. (*See*, R. pp. 21-23 ¶¶ 21, 23-32). Those allegations are entitled to fair deference, and the Respondent District and Respondent Charter School are not entitled to sovereign immunity.

2. Paradis' Defamation Claim is sufficiently attributable to conduct and statements within the statute of limitations.

This lawsuit was filed on September 22, 2015. Defamation has a two year statute of limitations. *Jones v Cty of Folly Beach*, 326 S.C. 360, 368 483 S.E.2d 770, 774 (Ct. App. 1997) (citing S.C. Code Ann. § 15-3-550) (Supp. 1995)). The Respondent District and Respondent Charter School attempt to narrow Paradis' Defamation claim to render a grossly prohibitive result. Respondents argue that Paradis' defamation claim is entirely sourced on her initial placement on a SAFE-T evaluation in August, 2013, and that therefore her defamation claim is barred, by one month, due to defamation's two year statute of limitations. (Respondents' brief pp. 9-11). To the contrary, Paradis' pleadings, with respect to defamation, are almost entirely based on conduct and speech within the actionable time period. Paradis, as relevant, alleges:

21. All of Plaintiff's peers and colleagues knew she was undergoing the evaluation process and witnessed the physical and emotional toll Plaintiff suffered as a result. Plaintiff's peers in the English department, who had experience working with her over a number of years, commented on the two-year evaluation process and speculated that Plaintiff was placed on it due to administration's belief that Plaintiff had classroom management issues, although Plaintiff was not the only teacher who reported discipline to administration.

22. After Plaintiff failed the evaluation for a second year, she was dismissed from her twenty-year career at JICHHS. She exhausted her administrative remedies.

...

25. Plaintiff was slandered by oral and written statements as well as by actions of Defendant District and Defendant JICHHS.

26. These statements and actions made against Plaintiff were made by agents and servants of Defendant District and Defendant JICHHS acting in the course and scope of their employment under the circumstances alleged above.

27. These statements and actions are false.

28. These statements and actions, **including false accusations that Plaintiff could not effectively teach her students and manage her classroom**, injured Plaintiff, and have defamed Plaintiff in her trade, business, and profession. By virtue of placing **and holding Plaintiff on the evaluation process for two years – which was widely known at JICHHS – Plaintiff's credibility as a teacher was diminished greatly.**

29. By the false statements and actions made against Plaintiff by agents and servants of Defendant District and Defendant JICHHS acting in the course and scope of their employment, Defendant District and Defendant JICHHS defamed Plaintiff, and the defamation was published to Plaintiff's colleagues, students, and possibly others, including parents who previously knew Plaintiff to be a good and hardworking English Teacher.

30. The false statements and actions were not privileged, as there was no duty to furnish the information to the recipients, and they circulated to persons other than Plaintiff and her superiors, injuring her professional reputation.

31. The statements and actions made by the agents and servants of Defendant District and Defendant JICHHS acting within the course and scope of their employment, **together with the actions that Defendant District and Defendant JICHHS took, including the actions that proximately caused Plaintiff's termination**, are defamatory per se.

(R. pp. 21-23 ¶¶ 21-22, 25-30) (emphasis added). With the exception of the word "placing" in paragraph 28 of the complaint each allegation of defamatory action and speech falls within the actionable statute of limitations. This Court is required to read all pled facts as true, and all inferences attributable therefrom, in Paradis' favor. *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001). Respondents' characterization of Paradis' defamation claim requests an opposite review standard.

Respondents, seeking further inferential support to which they are not entitled, also argue that Paradis' defamation damages are not abatable or cannot be attributed to conduct and speech before and then after the commencement of the statute of limitations. (Respondents' Brief pp. 10-11). A reasonable reading of Paradis' damages indicates that they entirely arise from occurrences within the statute of limitations. Paradis, on her defamation claim, seeks recompense for: the loss of her job, loss of income, loss of earning capacity, and future income and benefits associated therewith; as well as, embarrassment, humiliation, damage to her reputation, emotional distress, pain and suffering, and loss of sleep and self-confidence. (R. p. 23 ¶ 32). These subsets of damages, particularly the economic damages, are each reasonably understood to be flowing from the period of time that is actionable in this case.³

3. Paradis sufficiently pleads defamation.

The sole defamation element attacked by the Respondent District and Respondent Charter School is third party publication. (Respondents' Brief pp. 11-13). Respondents attempt to analogize this case to *Pagano v. Martin*, a 1968 Fourth Circuit per curiam opinion. (Respondents' Brief pp. 11-12); (citing, *Pagano*, 397 F.2d 620 (1968). *Pagano*, where the sole publication alleged was within a performance evaluation not shared with unprivileged third parties, is different from this case. *Id.* Plaintiff has sufficiently pled third party publication:

29. By the false statements and actions made against Plaintiff by agents and servants of Defendant District and Defendant JICHHS acting in the course and scope of their employment, Defendant District and Defendant JICHHS defamed Plaintiff, and the defamation was published to Plaintiff's colleagues, students, and possibly others, including parents who previously knew Plaintiff to be a good and hardworking English Teacher.

³ The Respondent District and Respondent Charter Schools' statute of limitations argument, if accepted, would engender a policy stance whereby plaintiffs should immediately initiate litigation where an occurrence might later on give rise to defamatory speech or conduct. That is a litigious proposition.

30. The false statements and actions were not privileged, as there was no duty to furnish the information to the recipients, and they circulated to persons other than Plaintiff and her superiors, injuring her professional reputation.

(R. p. 6 ¶¶ 29-30) (emphasis added). Paradis has pled unprivileged third party publication. “In South Carolina, an employee's statement to another employee is a ‘publication’ when the privilege of the employees' common interest is abused.” *McBride v. School District of Greenville County*, 389 S.C. 546, 562, 698 S.E.2d 845, 853 (Ct. App. 2010). The Respondents’ argument that the sole publication at issue lies within the language of Paradis’ SAFE-T evaluations requires an improper inference in its favor, and is not supported by the pleadings. Paradis is entitled to have both her pled facts, and the reasonable inferences flowing therefrom, viewed in her favor on a motion to dismiss. *Phyller v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (“A 12(b)(6) motion should not be granted if ‘facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.’”) (Internal citation omitted)⁴. Paradis, within this framework, has pled third party publication and defamation, in general, sufficiently.

4. Paradis sufficiently pleads special damages.

Special damages are required, in the civil conspiracy context, to prevent a double recovery. *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 610, 538 S.E.2d 15, 31 (Ct. App. 2000); *See Also, Anthony v. Ward*, 336 Fed. Appx. 311, 318, (C.A.4 S.C. (2009)) (interpreting South Carolina civil conspiracy law: “The case law makes clear that the concern is with the plaintiff receiving a double recovery”). “Special damages are those elements of damages that are the natural, but not the necessary or usual,

⁴ Respondents, relying on *DeBerry v. McCain*, assert that the Court is not to consider inferences drawn from well-pled allegations. (Respondents’ Brief pp. 5, 13); *citing, DeBerry v. McCain*, 275 S.C. 569, 574, 274 S.E.2d 293, 296 (1981). *DeBerry* was a decision on a demurrer prior to the modern May 1, 1986 enactment of Rule 12, SCRPC (amended again on July 1, 1995). Respondents’ use of *DeBerry* both within this argument (p. 13) and within their statement of the standard of review (p. 1) is mistaken. Furthermore, even if it were applicable, *DeBerry* allows the Court to view inferences in the non-movant’s favor; “It is for the court to determine what inferences, if any, can be justifiably drawn from the pleading.” *DeBerry*, 274 S.E.2d at 296.

consequence of the defendant's conduct.” *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 116, 682 S.E.2d 871, 875 (Ct. App. 2009). This Court has held that special damages are not sufficiently alleged where the damages for one claim are the same as the damages sought for a civil conspiracy claim. *Hackworth*, 682 S.E.2d at 875–76 (“Greywood has repeated verbatim the same damages in its civil conspiracy claim as are alleged in its claim for breach of contract accompanied by a fraudulent act . . . Accordingly, we believe under the case law cited above, Greywood failed to properly plead its civil conspiracy cause of action, and therefore, the trial court did not error in dismissing the claim.”)

Such is not the case here. Paradis pleads the following damages on her defamation claim:

32. That such statements and actions were false, known to be false, and given with reckless disregard for the truth, were maliciously made, and have proximately caused Plaintiff's severe and continuing damages including the loss of her job, loss of income, loss of earning capacity, and future income and benefits associated therewith. Further, Plaintiff has sustained embarrassment, humiliation, damage to her reputation, emotional distress, and pain and suffering, which will continue into the foreseeable future. As a result of these actions, Plaintiff lost a considerable amount of sleep and her self-confidence.

(R. p. 23 ¶ 32). Paradis pleads the following damages on her civil conspiracy claim:

36. Such actions taken by the Defendants and others amount to an unlawful civil conspiracy and approximately cause special damages to the Plaintiff for being blacklisted and ostracized from the profession of education.

37. Plaintiff is further entitled to an award of punitive damages from the Individual Defendants for their intentional, malicious, and evil actions.

(R. p. 24 ¶¶ 36-37 Paradis' special damages are the natural, but not typical, result of the Individual Respondents' conduct, and those damages are not the same, in word or in substance, as her defamation damages. As such, Paradis has sufficiently pled special damages, and the Individual Respondents' (Bohnstengel and Spann) argument to the contrary is not based on governing law. Furthermore, special damages, in this case, are facially inferred from the fact that the only damages sought against the Individual Respondents are for civil conspiracy. *See, Allegro, Inc. v. Scully*, 418 S.C.

24, 791 S.E.2d 140, 147 (fn 6) (2016), reh'g denied (Oct. 26, 2016); (Pleicones dissenting) ("Even if the Court were to preserve the Todd rule, the sole claim asserted against petitioner Corbin was civil conspiracy, and thus as to him the "special damages" rule created by Todd does not apply.)⁵.

5. Paradis sufficiently pleads a personal motive to harm her on the part of the Individual Respondents.

The Individual Respondents attempt to mischaracterize Paradis' civil conspiracy claim as solely relating "to conduct that occurred while [the Individual Respondents] were acting within the course and scope of their employment. . . ." (Respondents' Brief p. 17). This is a premature fact finding, reliant upon an improper inference in the Individual Respondents' favor. The pleadings indicate a personal motive to harm Paradis, by the Individual Respondents, which would not fall within their ordinary scope of employment. Specifically Paradis, as relevant, pled:

9. Plaintiff reported the same to Spann and Bohnstengel. After the incident, Plaintiff discussed the event with Bohnstengel in more detail and informed him that she desired to file a report with the local police department because of the aggressive and violent nature of the assault. Bohnstengel became angry with Plaintiff, strongly encouraged her not to make the report because it would "lower the JICHHS report card" related to disciplinary reports, place the school on a list of violent schools in the state, and further told Plaintiff that her report would be useless because she could not call students as witnesses due to their ages.

...

34. The Individual Defendants Bohnstengel and Spann met, conspired, schemed and planned with others to rebuke Plaintiff and to cause her special damages in an evil and personal agenda **motivated from a personal dislike of Plaintiff and her valid complaints of discipline issues**, which was offensive to the Defendants, who had previously experienced issues with discipline and its negative effect upon JICHHS and the District for reporting purposes.

⁵ It merits note that our Court is presently skeptical of the applicability of special damages to the tort of civil conspiracy. *See, Allegro, Inc.*, 791 S.E.2d 140, 145 (fn 3) (majority) & 146-147 (Beatty Concurrence), (Pleicones' Dissent).

(R. pp. 18-19, 23 ¶¶ 9, 34), (emphasis added). Retaliating against an employee for filing a valid disciplinary report cannot be reasonably inferred to be within the scope and course of the Individual Respondents' conduct. Therefore the Individual Respondents are not entitled to intracorporate immunity. Civil conspiracies between the employees of a principal and an agent are recognized in South Carolina where the employees and agents act outside of the scope of their employment. *See, Pridgen v. Ward*, 391 S.C. 238, 246, 705 S.E.2d 58, 63 (Ct. App. 2010); *see also, Crittenden v. Thompson-Walker Co., Inc.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App. 1986); (*holding*, "On the other hand, if 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").

6. An amendment, if necessary, would not be futile.

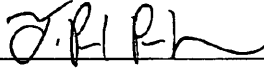
"When a plaintiff is not given the opportunity to file and serve an amended complaint, but is left with no choice but to appeal after dismissal of her case with prejudice, an appellate court which affirms the dismissal may modify the lower court's order to find the dismissal is without prejudice. *Spence v. Spence*, 368 S.C. 106, 130, 628 S.E.2d 869, 881 (2006). The Respondents argue that allowing Paradis to amend her complaint would be futile. (Respondents' Brief p. 18). This is ironic given that the Respondents additionally sought the alternative relief of a more definite statement, and that the majority of their arguments target minor asserted pleading deficiencies. Particularly, aside from their sovereign immunity and statute of limitations arguments, the Respondents argue that third party publication, special damages, and conduct outside the course and scope of employment are not pled with enough detail. Paradis vehemently disagrees with this argument as set forth above and within her opening brief. However assuming, *arguendo*, that the Respondents are right, and Paradis' pleadings are deficient, those deficiencies are the sort that could easily be corrected with an amendment to add minor details.

CONCLUSION

Appellant respectfully replies to the Respondents' brief as set forth above and asks this Honorable Court to Reverse the holding of the Circuit Court, and Remand this case for discovery.

Respectfully Submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2016-001337

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SC Court of Appeals

Leisel Paradis Appellant

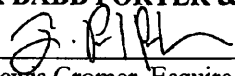
v.

Charleston County School District, James Island Charter High School, Robert Bohnstengel, and
Stephanie Spann, in their individual capacities, ... Respondents

CERTIFICATE OF COUNSEL

I hereby certify, as counsel of record in the above-captioned case, that the Final Brief and
Reply Brief submitted herewith contains no matter which is irrelevant to the appeal as required
by Rule 211.

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January 3, 2017
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Leisel Paradis, Appellant,

v.

Charleston County School District, James Island Charter
High School, Robert Bohnstengel and Stephanie Spann,
in their individual capacities, Respondents.

Appellate Case No. 2016-001337

Appeal From Charleston County
J. C. Nicholson, Jr., Circuit Court Judge

Opinion No. 5583
Heard June 5, 2018 – Filed August 1, 2018

AFFIRMED

J. Lewis Cromer and James Paul Porter, of Cromer Babb
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Bob J. Conley and Emmanuel Joseph Ferguson, of
Cleveland & Conley, LLC, of Charleston, for
Respondents Charleston County School District and
Robert Bohnstengel.

Rene Stuhr Dukes, of Rosen Rosen & Hagood, LLC, of
Charleston, for Respondents James Charter High School
and Stephanie Spann.

LOCKEMY, C.J.: In this civil case, Leisel Paradis appeals the circuit court's order granting Charleston County School District's, James Island Charter High School's, Robert Bohnstengel's, and Stephanie Spann's (collectively, Respondents) motions to dismiss her lawsuit asserting claims for defamation and civil conspiracy. We affirm.

FACTS

Paradis was employed as a teacher at James Island Charter High School (JICHHS), which is located within the Charleston County School District. Bohnstengel was the principal at JICHHS during part of the 2013-14 school year and Spann was the assistant principal at JICHHS during the 2013-14 and 2014-15 school years.

At the close of the 2012-13 school year, Paradis received notice she would be placed on an evaluation protocol to correct deficiencies identified by school administrators. After two years of evaluations, Respondents determined Paradis did not correct the identified deficiencies and terminated her. Thereafter, Paradis filed this action alleging claims for defamation and civil conspiracy. Respondents moved to dismiss her complaint. The circuit court granted the motions. This appeal followed.

STANDARD OF REVIEW

"In deciding a motion to dismiss pursuant to 12(b)(6), SCRPC, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). "A 12(b)(6)[, SCRPC] motion should not be granted if 'facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.'" *Id.* (quoting *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Id.*

DEFAMATION

"The tort of defamation permits a plaintiff to recover for injury to her reputation as the result of the defendant's communications to others of a false message about the plaintiff." *McBride v. School Dist. of Greenville Cty.*, 389 S.C. 546, 559, 698 S.E.2d 845, 852 (Ct. App. 2010). The plaintiff in a defamation action must prove "(1) a false and defamatory statement was made; (2) the unprivileged publication

was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *Id.* at 559-60, 698 S.E.2d at 852 (quoting *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002)). "The publication of a statement is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Id.* at 560, 698 S.E.2d at 852 (quoting *Fleming*, 350 S.C. at 494, 567 S.E.2d at 860).

"A statement is classified as defamatory *per se* when the meaning or message is obvious on its face, and defamatory *per quod* when the defamatory meaning is not clear unless the hearer knows facts or circumstances not contained in the statement." *Id.* "Even '[a] mere insinuation is actionable as a positive assertion if it is false and malicious and its meaning is plain.'" *Id.* (quoting *Murray v. Holnam, Inc.*, 344 S.C. 129, 139, 542 S.E.2d 743, 748 (Ct. App. 2001)). "However, when the statement is defamatory *per quod*, 'the plaintiff must introduce extrinsic facts to prove the defamatory meaning.'" *Id.* (quoting *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006)).

"Additionally, a statement may be actionable *per se* or not actionable *per se*." *Id.* "The determination of whether or not a statement is actionable *per se* is a matter of law for the court to resolve." *Id.* (quoting *Erickson*, 368 S.C. at 465, 629 S.E.2d at 664). "When the statement is classified as actionable *per se*, the defendant is presumed to have acted with common law malice, and the plaintiff is presumed to have suffered general damages." *Id.* "When the statement is not actionable *per se*, 'the plaintiff must plead and prove both common law malice and special damages.'" *Id.* (quoting *Erickson*, 368 S.C. at 465, 629 S.E.2d at 664). "Common law malice means the defendant acted with ill will toward the plaintiff, or acted recklessly or wantonly, i.e., with conscious indifference of the plaintiff's rights." *Id.* (quoting *Erickson*, 368 S.C. at 466, 629 S.E.2d at 665). "Slander is actionable *per se* when the defendant's alleged defamatory statements charge the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession." *Id.* at 560-61, 698 S.E.2d at 852 (quoting *Goodwin v. Kennedy*, 347 S.C. 30, 36, 552 S.E.2d 319, 322-23 (Ct. App. 2001)).

The circuit court granted Respondents' motions for a directed verdict, finding Paradis's defamation claim was barred by sovereign immunity. The circuit court found the South Carolina Tort Claims Act (SCTCA) did not waive Respondents' sovereign immunity for performing their statutory duty to assess each teacher's

competence. The circuit court also found Paradis's claim was barred by the two-year statute of limitations applicable to defamation. Finally, the circuit court found Paradis failed to state facts sufficient to constitute a cause of action for defamation.

"The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees." *Proctor v. Dep't of Health & Envtl. Ctrl.*, 368 S.C. 279, 290, 628 S.E.2d 496, 502 (Ct. App. 2006) (quoting *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 280, 607 S.E.2d 711, 714 (Ct. App. 2005)). "The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained" within the SCTCA. S.C. Code Ann. § 15-78-40 (2005). However, the General Assembly did not intend to waive all its sovereign immunity. "The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter." S.C. Code Ann. § 15-78-20(b) (2005). Specifically, the SCTCA provides a "governmental entity is not liable for a loss resulting from: . . . the exercise of discretion or judgment by the governmental entity or employee." S.C. Code Ann. § 15-78-60(5) (2005).

We find the circuit court properly dismissed Paradis's defamation claim against Respondents because the actions Paradis alleges were defamatory were discretionary acts by governmental employees. Paradis's complaint alleges she was assaulted by a student in her classroom and told Bohnstengel she planned to file a police report documenting the incident. Paradis claimed Bohnstengel became angry with her and discouraged her from filing a report, as it would harm the school's reputation. Subsequently, Spann recommended Paradis be placed on the SAFE-T/ADEPT evaluation for the 2013-2014 school year based on the number of disciplinary referrals she made. Paradis claimed she was shocked because she had recently passed a separate goals based evaluation.

Spann and another administrator, Maureen Jessup¹, evaluated Paradis during the 2013-14 school year. Based on their observations, the administrators decided Paradis failed her evaluation. In order to continue working, Paradis was required to undergo the same evaluation during the 2014-15 school year. Spann, Richard

¹ Initially, Bohnstengel served as one of Paradis's evaluators. However, before the evaluation finished, Bohnstengel was terminated. Jessup completed the evaluation.

Gordon, the new principal at JICHHS, and Susan Watson-Bell served as Paradis's evaluators. Paradis claimed the evaluation team periodically changed her requirements and she subsequently failed another evaluation. Paradis was then terminated.²

Paradis's complaint states she "was slandered by oral and written statements as well as by actions of the Defendant District and Defendant JICHHS." She further claimed, "These statements and actions, including false accusations that Plaintiff could not effectively teach her students and manage her classroom, injured Plaintiff in her trade business and profession." Furthermore, "By virtue of placing and holding Plaintiff on the evaluation process for two years – which was widely known at JICHHS – Plaintiff's credibility as a teacher was diminished greatly."

During the motion hearing Paradis attempted to provide context for her claims. Paradis told the circuit court "there are several things that were defamatory in this case, not only the evaluation itself, but also the act of termination due to the results of the evaluation." Paradis claimed she never should have been placed on the evaluation plan as she passed the previous goals based evaluation.

In essence, Paradis asserts the act of improperly placing her on the SAFE-T/ADEPT evaluation was itself defamation, without requiring any other actions by school employees. Paradis does not indicate any of the administrators improperly discussed her case with other employees or outside individuals. Furthermore, in Paradis's motion to reconsider following the circuit court's order, she continued to focus her argument on her placement on the evaluation plan, not on statements made to other individuals. It is the responsibility of education administrators to continually evaluate faculty members they supervise. S.C. Code Ann. § 59-26-40(J) (Supp. 2017) ("Teachers employed under a continuing contract must be evaluated on a continuous basis. At the discretion of the local district and based on an individual teacher's needs and past performance, the evaluation may be formal or informal."). Ordinarily, acts can constitute defamation; however, in this case, Paradis is claiming Respondents defamed her by utilizing the discretion given them by state law to place her on an evaluation plan. The SCTCA specifically excludes liability for this type of exercise of discretion. S.C. Code Ann. § 15-78-60(5) (stating a "governmental entity is not liable for a loss resulting from: . . . the exercise of discretion or judgment by the governmental entity or employee"). Accordingly, we affirm the circuit court's dismissal of Paradis's

² Paradis exhausted her administrative remedies following her termination.

defamation claim because the General Assembly has not waived its right to sovereign immunity with regard to the evaluation process for teachers.

We recognize the circuit court did not address Paradis's assertions she "was slandered by oral and written statements as well as by actions of the Defendant District and Defendant JICHHS" because Paradis's argument during the hearing on the motion to dismiss focused solely on the evaluation process. In her brief, however, Paradis asserts her defamation claim "involves the words and conduct associated with her being maintained on the SAFE-T plan throughout the 2013-2014 school year, her continuation on that plan for 2014-2015, her termination, and publications to non-privileged co-workers." Therefore, we must also determine whether her claims that school administrators made false statements about her ability to teach are sufficient to overcome a motion to dismiss. We find they are not.

In deciding whether a claim should be dismissed pursuant to Rule 12(b)(6), SCRCPP, this court should consider whether Paradis has "state[d] facts sufficient to constitute a cause of action." "Rule 12(b)(6), SCRCPP, 'retains the Code Pleading standard . . . rather than the more lenient notice pleading standard found in the federal rules.'" *Gaskins v. S. Farm Bureau Cas. Ins.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000) (quoting Harry M. Lightsey, Jr. & James F. Flanagan, *South Carolina Civil Procedure* 93 (2nd ed. 1996)). When a plaintiff states nothing more than legal conclusions, a claim should fail. *Talbott v. Padgett*, 30 S.C. 167, 171, 8 S.E. 845, 847 (1889). Paradis failed to provide any facts to support her claims. She states she "was slandered by oral and written statements as well as by actions of the Defendant District and Defendant JICHHS" and "[t]hese statements and actions, including false accusations that Plaintiff could not effectively teach her students and manage her classroom, injured Plaintiff in her trade business and profession." She never indicates who made defamatory statements about her, what they said, or to whom those statements were published. We recognize the pleadings must be liberally construed. *Gaskins*, 343 S.C. at 671, 541 S.E.2d at 271. Rule 12(b)(6) requires the plaintiff to allege facts. Paradis failed to do so. Accordingly, we affirm the circuit court's order dismissing her defamation claim.

CIVIL CONSPIRACY

"The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing special damage." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682

S.E.2d 871, 874 (Ct. App. 2009). "The difference between civil and criminal conspiracy is in criminal conspiracy, the gravamen of the offense is the agreement itself, whereas, in civil conspiracy, the gravamen of the tort is the damage resulting from an overt act done pursuant to a common design." *Id.*

"A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint." *Id.* "Moreover, because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." *Id.*

Paradis asserted Bohnstengel and Spann "met, conspired, schemed and planned with others to rebuke [her] and cause her special damages in an evil and personal agenda motivated from a personal dislike of Plaintiff and her valid complaints about discipline issues." Paradis claimed Bohnstengel and Spann "were able to specially [sic] inflict their evil agenda upon the Plaintiff and did so outside the scope of their own employment . . . [by] targeting the Plaintiff for an unwanted and invasive evaluation." According to Paradis, "[s]uch actions taken by the Defendants and others amount to an unlawful civil conspiracy and approximately cause [sic] special damages to the Plaintiff for being blacklisted and ostracized from the profession of education." As a remedy, Paradis requested actual and punitive damages, along with attorney's fees and costs associated with the civil conspiracy cause of action.

The circuit court dismissed Paradis's civil conspiracy claim, finding she failed to state with specificity the special damages she sustained as a result of Bohnstengel and Spann's alleged conspiracy and the actions she alleges constituted the conspiracy were done in the scope of Bohnstengel's and Spann's employment.

"Special damages are those elements of damages that are the natural, but not the necessary or usual, consequence of the defendant's conduct." *Hackworth*, 385 S.C. at 116, 682 S.E.2d at 875. "General damages are inferred by the law itself, as they are the immediate, direct, and proximate result of the act complained of." *Id.* at 116-17, 682 S.E.2d at 875. "Special damages, on the other hand, are not implied at law because they do not necessarily result from the wrong." *Id.* at 117, 682 S.E.2d at 875. "Special damages must, therefore, be specifically alleged in the complaint to avoid surprise to the other party." *Id.* "If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed." *Id.*

The circuit court found "[t]he only mention of special damages in Plaintiff's complaint, beyond the conclusory statement that she sustained them generally, is that she has been ostracized or blacklisted from the profession of education and that she incurred legal fees to pursue the claims set forth in her [c]omplaint." However, the circuit court found "Plaintiff fails to plead any specific facts to support such an assertion, such as an inability to obtain other employment in the education profession." The circuit court further noted Paradis's "alleged damages of being blacklisted and ostracized are simply a re-wording of the 'injury to her professional reputation' that are the claimed damages under her defamation cause of action." Finally, the circuit court found Paradis could not rely on the costs she bore for prosecuting her civil conspiracy claim as special damages.

We note Paradis has on appeal alleged the damages she claims for civil conspiracy and defamation are for different parties and are thus different damages. We decline to address this issue as it was never raised to the circuit court. *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved.").

Additionally, Paradis asserts the circuit court erred because she sufficiently alleged special damages. She claims the reputational damages she asserts in her defamation claim are separate and distinct from the "alleged damages of being blacklisted and ostracized." However, those reputational damages are precisely the damages one would expect from defamatory statements. Furthermore, in her brief, Paradis fails to address the circuit court's decision that her attorney's fees would not constitute special damages. Accordingly, we affirm the circuit court's decision that Paradis has failed to plead any damages other than the general damages which arise from alleged defamatory acts. *See Hackworth*, 385 S.C. at 116, 682 S.E.2d at 875 ("General damages are inferred by the law itself, as they are the immediate, direct, and proximate result of the act complained of.").

CONCLUSION

Accordingly, the decision of the circuit court is

AFFIRMED.³

³ Paradis also requests this court allow her to amend her complaint if it were to find her defamation and civil conspiracy claim lacking. *Spence v. Spence*, 368 S.C. 106, 130, 628 S.E.2d 869, 881 (2006) ("When a plaintiff is not given the

WILLIAMS and KONDUROS, JJ., concur.

opportunity to file and serve an amended complaint, but is left with no choice but to appeal after dismissal of her case with prejudice, an appellate court which affirms the dismissal may modify the lower court's order to find the dismissal is without prejudice."). We decline to do so. Paradis's request in essence asks this court to reverse the circuit court's decision to not allow her to amend her complaint. However, Paradis did not present the circuit court or this court with any proposed changes she would make to the complaint to cure the deficiencies identified. Accordingly, this court is unable to determine whether the circuit court abused its discretion in denying her request to amend. *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 632, 743 S.E.2d 808, 812 (2013) ("A motion to amend is within the sound discretion of the trial judge and the opposing party has the burden of establishing prejudice.").

COPY

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson Jr., Circuit Court Judge

Case No. 2016-001337
Appellate Case No.: 2016-0C1337

RECEIVED

AUG 16 2018

SC Court of Appeals

Leisel Paradis Appellant

v.

Charleston County School District, James Island Charter High School, Robert Bohnstengel, and
Stephanie Spann, in their individual capacities, ... Respondents

APPELLANT'S PETITION FOR REHEARING

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Appellant, Leisel Paradis, submits this Petition for Rehearing of this Court's opinion filed on August 1, 2018 pursuant to Rule 221(a), SCACR. This Court held: (1) that Paradis' defamation claim was foreclosed because she failed to plead any defamatory statements or acts outside of the Respondents explicit statutory authority; (2) that Paradis' civil conspiracy claim should be dismissed for want of special damages; and (3) that Paradis should not be given leave to amend. *Paradis v. Charleston Cty. Sch. Dist.*, Op. No. 5583 No. 2016-001337, 2018 WL 3636581, at *5 (S.C. Ct. App. Aug. 1, 2018) (Shearouse Adv. Sh. No. 31 at 43-51). Paradis does not petition this Court to rehear her defamation claim against Charleston County School District and James Island Charter High School.¹ Paradis does petition this Court to rehear and reconsider its determination on her conspiracy claim and its denial of leave to amend. Paradis makes the following arguments in support of this petition:

1. Special damages are not or should not be required to plead a conspiracy claim.
2. Now, having conceded her sole other claim, Paradis' conspiracy damages are sufficient.
3. Paradis' damages were special damages because they were the only damages sought against the Individual Respondents.
4. This Court's finding that Paradis did not plead special damages misapplied the standard of review.
5. Paradis should have been given leave to amend.

Here, in light of the Court's dissent and the majority's response to the Court's dissent in *Allegro, Inc. v. Scully*, there is sufficient persuasive authority that special damages are not or should not be a pleading requirement. Further, if pleading special damages is required, Respondents Bohnstengel and Spann

¹The Lower Court held that the Respondents were protected by sovereign immunity, without citing to a specific exception to the South Carolina Tort Claims Act's waiver of immunity, based on law that pre-dated the Tort Claims Act. (R. pp. 6-7). This Court, on the other hand, did base its ruling on an expectation to the Tort Claims Acts waiver of immunity, discretionary immunity. *Paradis*, 2018 WL 3636851 at 3 (Shearouse Adv. Sh. No. 31 at 44-49; *citing*, S.C. Code Ann. § 15-78-60(5)). Thus, Paradis maintains that the Trial Court's ruling on this issue was reversible, but she does not challenge this Court's legally distinct ruling on that same issue.

are solely named in the conspiracy claim and conspiracy is the sole remaining claim; so, special damages are not required. Last, with respect to conspiracy, this Court's determination that Paradis' conspiracy damages were synonymous with her defamation damages misapplied the standard of review. Finally, Paradis did present, albeit during oral argument, background for why her conspiracy damages of ostracism and blacklisting were different from her defamation damages and, to the extent those damages need further factual support, the added context was ample basis to support leave to amend.

1. CIVIL CONSPIRACY DOES NOT REQUIRE PLEADING SPECIAL DAMAGES.

The Petitioner's claim for civil conspiracy should have survived dismissal because it does not require special damages to be pled.

The Court's special damages requirement for a civil conspiracy claim is to prevent double recovery. The Court held in *Todd* that a plaintiff must plead and prove "special damages" to state a cause of action for civil conspiracy. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 292, 278 S.E.2d 607, 611 (1981); citing 15A C.J.S. Conspiracy § 33, at 178. Following *Todd*, special damages were treated as a pleading requirement on conspiracy claims. See, e.g., *Vaught v. Waites*, 300 S.C. 201, 209, 387 S.E.2d 91, 95 (Ct. App. 1989) ("Because no special damages are alleged aside from the breach of contract damages, we hold the conspiracy action is barred under *Todd*).

The Court relied on 15A C.J.S. Conspiracy § 33 to require that special damages be pled and proven. *Todd*, 278 S.E.2d at 611. However, that C.J.S. authority addressed the well-established rule against double recovery and the resulting need for an election of remedies when a claim for civil conspiracy is for the same acts and same damages sought against the same defendant as another claim. That C.J.S. section provides:

Where the particular acts charged as a conspiracy are the same as those relied on as the tortious act or actionable wrong, plaintiff cannot recover damages for such act or wrong, and recover likewise on the conspiracy to do the act or wrong.

15A C.J.S. *Conspiracy* § 33. The *Todd* rule is more appropriately suited to allow multiple claims to allege the same damages with the caveat that double recovery is expressly prohibited, and it should not be applied to the determination of whether a complaint is sufficiently pled.

The Court recently supplied persuasive authority to this premise in *Allegro, Inc. v. Scully*. Former Chief Justice Pleicones, dissenting, reasoned: “that the *Todd* Court misread and misapplied [15A C.J.S. *Conspiracy*] § 33, which merely states a prohibition on double recovery, not a rule of pleading or proof[.]” *Allegro, Inc. v. Scully*, 418 S.C. 24, 37, 791 S.E.2d 140, 147 (2016), *rev’g denied* (Oct. 26, 2016). Chief Justice Pleicones continued: “I would overrule *Todd* and its progeny to the extent they create a ‘special damages’ pleading and/or proof requirement for a civil conspiracy cause of action.” *Id.* 791 S.E. 2d at 147. Chief Justice Beatty concurred with the majority opinion in part, but also dissented in part to agree with Chief Justice Pleicones: “advocating for this Court to overrule *Todd* and its progeny.” *Id.* at 146. The majority, importantly, declined to overrule the *Todd* rule on specific procedural grounds because of the *Allegro* case’s age and procedural posture. The majority reasoned:

While Chief Justice Pleicones and Justice Beatty would overrule *Todd*, we disagree this is an appropriate vehicle in which to do so given this case’s age and procedural posture. This lawsuit was filed over twelve years ago and has already been through a lengthy trial. Given the pending retrial arising out of the remaining causes of action, we believe it would be unfair to the parties to change the pleading and proof requirements at this late stage in the litigation.

Id. at 145, Fn 3.

Paradis appeals a Rule 12 Order in a case where discovery has not begun; whereas, *Allegro* was twelve years old and was an appeal from the denial of a directed verdict or JNOV. This is an

appropriate case to reverse the *Todd* rule or modify it to only apply to a double recover and the election of remedies.²

2. HAVING DISMISSED THE DEFAMATION CLAIM, WHICH IS NOT APPEALED, THE CONSPIRACY DAMAGES ARE SPECIAL DAMAGES.

Regardless of this Court's willingness to disagree with the post-decision application of *Todd*, Paradis does not appeal or petition to rehear this Court's holding on her defamation claim; thus, the problem of duplicative damages is erased. The *Todd* Court was explicit that the problem with the plaintiff's special damages were that they were the same damages sought on his other claims:

Todd seeks damages in his first four causes of action for the same acts incorporated by the fifth cause. He is therefore precluded from seeking damages for the same acts yet again.

Todd, 278 S.E.2d at 611 (1981). This Court echoed that holding in *Hackworth v. Greywood at Hammett, LLC*

In this case, Greywood has repeated verbatim the same damages in its civil conspiracy claim as are alleged in its claim for breach of contract accompanied by a fraudulent act. Nothing in the claim informs the Hackworths what special damages are alleged as part of Greywood's civil conspiracy claim. Accordingly, we believe under the case law cited above, Greywood failed to properly plead its civil conspiracy cause of action, and therefore, the trial court did not error in dismissing the claim.

Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 117, 682 S.E.2d 871, 875-76 (Ct. App. 2009).

Paradis' conspiracy damages, though she contends they were distinct from her defamation damages, are now the only damages she seeks. Thus, when this Court affirmed the dismissal of Paradis' defamation claim, it removed the special damages problem and rendered its dismissal of her conspiracy claim unwarranted.

² "Permission of the appellate court shall not be required to argue against precedent in the brief." Rule 217, SCACR.

3. PARADIS' ONLY CLAIM AGAINST RESPONDENTS BOHNSTENGAL AND SPANN WAS HER CONSPIRACY CLAIM, SO SHE PLED SPECIAL DAMAGES.

Again, regardless of this Court's willingness to disagree with the post-decision application of *Todd*, Paradis only sought damages from Respondents Bohnstengel and Spann on her conspiracy claim; thus, the *Todd* rule does not apply. Chief Justice Pleicones noted this dichotomy (from cases of multiple claims with the same damages) in his *Allegro* dissent:

Even if the Court were to preserve the *Todd* rule, the sole claim asserted against petitioner Corbin was civil conspiracy, and thus as to him the "special damages" rule created by *Todd* does not apply.

Allegro, Inc., 791 S.E.2d at 147. The portions cited in § 2 above from *Todd* and *Hackworth* dismissing conspiracy claims where the same damages were sought against the same defendants in all relevant claims highlight this distinction. Here, there can be no problem of special damages where the conspiracy damages are the only damages sought against the conspiracy Respondents.

This Court declined to rule on this argument finding that it was not preserved. *Paradis*, 2018 WL 3636581 at 5 (Shearouse Adv. Sh. No. 31 at 50). ("We decline to address this issue as it was never raised to the circuit court."). "[W]here the question of issue preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation." *Johnson v. Roberts*, 422 S.C. 406, 412, 812 S.E.2d 207, 210 (Ct. App. 2018), *rev'g denied* (Apr. 18, 2018); *quoting, Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012). Moreover,

When the opposing party does not raise a preservation issue on appeal, courts are not precluded from finding the issue unpreserved if the error is clear. However, the silence of an adversary should serve as an indicator to the court of the obscurity of the purported procedural flaw.

Atl. Coast Builders & Contractors, LLC, 730 S.E.2d at 287 (2012). Therefore, it is necessary to note that Respondents Bohnstengel and Spann do not appear to have argued on brief or at oral argument, to the undersigned's recollection, that the issue of whether *Todd* rule applied to them was not preserved. (Respondent Brief pp. 13-17). Perhaps that is because this is, in essence, an issue within an issue.

Meaning, there is no doubt that Paradis argued to the circuit court that she had sufficiently pled special damages below, there is no doubt that the conspiracy claim is the only claim alleged against Bohnstengel and Spann, and there is no doubt Paradis raised this argument here; rather, the sole doubt before this Court is that Paradis made this specific sub-argument below. (R. pp. 17-24, 47-52) (Appellant Brief pp. 13-14).

Candidly, the oral argument below does not contain an explicit reference to this argument; however, Paradis' legal memorandum below does:

The third element, special damages must be satisfied to prevent a double recovery.

...

Plaintiff pled special damages that are separate and distinct from those damages pled in her other claim because the damages pled in the defamation claim are exclusively set forth against Individual not the Individual Defendants.

(R pp. 82-83). Further, the Circuit Court, though it did not specifically address this issue, incorporated the issue into its order: "Based on the Complaint, the legal memoranda, and arguments of Counsel, the Court makes the following findings of fact and conclusions of law. (R. p. 3). Here, where this issue was directly raised by Paradis on brief below and that argument was generally rejected by the Court, "any doubt should be resolved in favor of preservation." *Johnson*, 812 S.E.2d at 210.

Furthermore, the *Allegro* decision where Chief Justice Pleicones provided persuasive authority to this argument in dissent was not published until August 24, 2016; whereas, this matter was heard on March 30, 2016, the order dismissing this case was granted on April 15, 2016, and the motion to reconsider was denied on May 19, 2016. (R. pp. 1-13, 25). Paradis based her appellate argument on the *Allegro* decision. (Appellant Brief pp. 13-14). Thus, with respect to issue preservation and in so much as this issue was centered on the *Allegro* decision, a party should not be expected to fully argue an issue at the Circuit Court prior to the arrival of the persuasive legal authority that supports that argument. Here, Paradis raised this issue below in her legal memorandum and that memorandum was

rejected by the Circuit Court; so, this issue is sufficiently preserved. Once treated as preserved, this Court can and should reverse the Circuit Court's decision on Paradis' conspiracy claim because the only damages alleged against the Individual Respondents are the conspiracy damages; so, the *Todd* rule does not apply.

4. PARADIS DAMAGES WERE SPECIAL WHEN ASSESSED AGAINST THE APPROPRIATE STANDARD OF REVIEW.

"[T]he appellate court [on Rule 12(b)(6)] applies the same standard of review implemented by the trial court." *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 279, 648 S.E.2d 295, 298 (Ct. App. 2007) citing, *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001). "The [Trial Court's Order] will not be sustained if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Williams*, 553 S.E.2d at 499; citing, *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987); *McCormick v. England*, 328 S.C. 627, 494 S.E.2d 431 (Ct.App.1997). "The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief." *Williams*, 553 S.E.2d at 499-500; citing, *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987); *Cowart v. Poore*, 337 S.C. 359, 523 S.E.2d 182 (Ct.App.1999).

Paradis alleged the following damages for her defamation claim:

32. That such statements and actions were false, known to be false, and given with reckless disregard for the truth, were maliciously made, and have proximately caused Plaintiff's severe and continuing damages including the loss of her job, loss of income, loss of earning capacity, and future income and benefits associated therewith. Further, Plaintiff has sustained embarrassment, humiliation, damage to her reputation, emotional distress, and pain and suffering, which will continue into the foreseeable future. As a result of these actions, Plaintiff lost a considerable amount of sleep and her self-confidence.

(R. p. 23). Paradis next alleged the following damages for her civil conspiracy claim:

36. Such actions taken by the Defendants and others amount to an unlawful civil conspiracy and approximately cause special damages to the Plaintiff for being blacklisted and ostracized from the profession of education.

37. Plaintiff is further entitled to an award of punitive damages from the Individual Defendants for their intentional, malicious, and evil actions.

(R. p. 24). This Court concluded that Paradis' damages for ostracism and blacklisting were "precisely the damages one would expect from defamatory statements." Paradis respectfully contends that the Court's conclusion on this point denied her the benefit of the governing standard of review. When Paradis' conspiracy claim is assessed against the appropriate review framework, giving her the benefit of all reasonable inferences and in the light most favorable to her, her conspiracy damages were sufficiently distinct in both word and form from her defamation damages.

5. PARADIS SHOULD BE GIVEN LEAVE TO AMEND THE COMPLAINT.

This Court ruled that Paradis should not be given leave to amend because she "did not present the Circuit Court or this Court with any proposed changes she would make to the complaint to cure the deficiencies identified." *Paradis*, 2018 WL 3636581 at 5 (Shearouse Adv. Sh. No. 31 at 54, Fn. 3).

However, Paradis provided this Court the context for her conspiracy damages of ostracism and blacklisting on oral argument. Specifically, she argued that, as a long-term public educator in a county where only one public school district existed, she was cut off from future employment in her field absent moving her family or accepting a considerable commute. Within this context, her damages are distinct from those of an ordinary employee who is terminated from an employer with limited other locations and with market competitors. Thus, the damages she suffered because of the actions she attributed to the Individual Respondents in her conspiracy claim were distinct from the more ordinary damages alleged in her workplace defamation claim.

"A motion to amend is addressed to the sound discretion of the trial judge." *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct. App. 2005); *citing, Stanley*

v. Kirkpatrick, 357 S.C. 169, 592 S.E.2d 296 (2004); *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 599 S.E.2d 462 (Ct.App.2004). "Leave to amend pleadings pursuant to Rule 15, SCRCp, shall be liberally and freely given when justice so requires and does not prejudice any other party." *Id.*, citing, *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997); *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (Ct.App.1998). "The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it." *Id.* *Tanner v. Florence County Treasurer*, 336 S.C. 552, 521 S.E.2d 153 (1999); *Lewis-Davis*, 360 S.C. at 232, 599 S.E.2d at 465. "The party opposing the amendment has the burden of establishing prejudice." *Id.*, citing, *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 431 S.E.2d 587 (1993); *Pruitt*, 330 S.C. at 489, 499 S.E.2d at 253. "This rule strongly favors amendments and the court is encouraged to freely grant leave to amend." *Id.*, citing, *Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 363 S.E.2d 398 (Ct.App.1987). Here, there has not been a showing of prejudice, and granting Paradis leave to amend would not have substantially changed the nature of the civil conspiracy claim against Respondents Bohnstengel and Spann.

Therefore, Paradis, to the extent her damages needed the additional context described above to survive dismissal, should have been given leave to amend.³

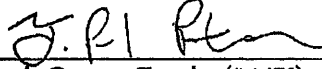
CONCLUSION

For the reasons set forth above, Petitioner respectfully requests this Court grant a rehearing in this matter or reconsider this matter and reverse the circuit court's decision.

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³ Paradis also notes that she suffered considerable medical damages as well because of the Conspiracy Respondents' conduct. The undersigned did not raise this on argument, ironically in light of this Court's issue preservation determination, because he felt it was not sufficiently in the record.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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Appellate Case No. 2016-001337

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SC Court of Appeals

Leisel Paradis Appellant

v.

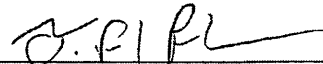
Charleston County School District, James Island Charter High School, Robert Bohnstengel, and
Stephanie Spann, in their individual capacities, ... Respondents

PROOF OF SERVICE

I certify that I, the undersigned employee of Cromer Babb Porter & Hicks, LLC, caused to have served Appellant's Petition for Rehearing by depositing a copy of it in the United States Mail, postage prepaid, on August 16, 2018, to attorney of record, Rene S. Dukés, Esq., ROSEN, ROSEN, HAGOOD, LLC, P.O. Box 893, Charleston, SC 29402, and Bob J. Conley, Esq., CLEVELAND AND CONLEY, LLC, 171 Church Street, Suite 310, Charleston, SC 29402.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge
Charleston County

Case No. 2015-CP-10-05093
Appellate Case No. 2016-001337

Leisel Paradis Appellant,

v.

Charleston County School District, James Island Charter High School, Robert Bohnstengel, and
Stephanie Spann, in their individual capacities Respondents.

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As an initial matter, Appellant's Petition for Rehearing should be dismissed because it fails to comply with Rule 221(a), SCACR, which requires a petition for rehearing to state "with particularity the points supposed to have been overlooked or misapprehended by the court." Rather than clearly highlight any errors in the court's decision, Appellant instead alleges that, by declining to request a rehearing on her defamation claim, the damages she pled for civil conspiracy cannot be duplicative and, thus, the civil conspiracy claim must survive.

Appellant clearly ignores the fact a dismissal of an action under Rule 12(b)(6), SCRCR, is based on the Complaint and *not* on the Appellant's Petition for Rehearing. Appellant has, in large part, used this procedural rule to do exactly what the South Carolina Supreme Court cautioned litigants not to do:

We regard this as an opportune time to say some things regarding petitions for rehearings, which, perhaps, we should have said a long time ago. The purpose of a petition for rehearing seems not to be fully understood by some members of the bar. Petitions of that character are allowed by the terms of rule 17 of this court. The purpose of such a petition is to aid the court in deciding correctly a case heard by it. The petition must show, according to the rule, 'the points supposed to have been overlooked or misapprehended by the Court.' The purpose of a petition for rehearing is not to have presented points which lawyers for the losing parties have overlooked or misapprehended, and the purpose of a petition for rehearing is not just to have the case tried in this court a second time.

Petitions for rehearing are filed in at least three-fourths of the cases decided by this court. Many of them, we fear, some time, are filed just for delay. It is a rare thing when the court grants such a petition. Usually, they are dismissed with a simple order to that effect, for the reason that they contain nothing but a "rehash" of what the losing party has said before, matters which the court has already considered well and disposed of.

Arnold v. Carolina Power & Light Co., 167 S.E. 234, 238 (1933)

However, should the court entertain Appellant's argument, Respondents assert that the Petition should nonetheless be denied because the court did not overlook any points raised by Appellant and correctly applied the law to the allegations in the Complaint.

I. A CLAIM FOR CIVIL CONSPIRACY DOES REQUIRE A PLEA FOR SPECIAL DAMAGES, AND APPELLANT FAILED TO PLEAD THEM.

The basis of the court's affirmance of the circuit court's dismissal of Appellant's civil conspiracy claim is that she "failed to plead any damages other than the general damages which arise from alleged defamatory acts." Paradis v. Charleston Cty. Sch. Dist., Op. No. 5583, No 2016-001337, 2018 WL 3636581, at *5 (Ct. App. Aug. 1, 2018) Rather than demonstrating any legal error, Appellant now maintains that, because she is not requesting a rehearing on her defamation claim, she need not plead special damages.

In her Petition, Appellant relies on Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 278 S.E.2d 607 (1981), Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct. App. 1989), and 15A C.J.S. Conspiracy §3, which, Appellant concedes, all clearly state that special damages must be plead to sustain an action for civil conspiracy. However, Appellant goes on to argue that the reason for pleading damages in a civil conspiracy claim is to prevent double recovery, a concern which she suggests is eliminated by the dismissal of her defamation claim. This argument which again misapprehends the basis of a 12(b)(6) dismissal. Appellant goes on to urge this court, for the first time, to overrule Todd, 276 S.C. 284, 278 S.E.2d 607. This argument is too late and must be disregarded. Kennedy v. South Carolina Retirement System, 564 S.E.2d 322, 322, 349 S.C. 531, 532 (2001) ("Court cannot consider new argument in a petition for rehearing that was not previously raised.")¹

Because Appellant failed to plead special damages *in her complaint* and has not demonstrated any error in the court's decision, Appellant's Petition for Rehearing must be denied.

II. THE DISMISSAL OF APPELLANT'S CAUSE OF ACTION FOR DEFAMATION DOES NOT RENDER HER CLAIM FOR CIVIL CONSPIRACY ACTIONABLE.

¹ Appellant cites Rule 217, SCACR, to support the propriety of her argument against precedent. However, this Rule applies to briefs and not to motions.

Again, Appellant completely overlooks the procedural posture of this case. She initiated an action against Respondents for defamation and civil conspiracy. The circuit court dismissed both claims and, in particular, found that Appellant had failed to *plead* special damages in her *complaint* with regard to the cause of action for civil conspiracy. Despite Appellant's statement in her Petition for Rehearing, she *did* appeal the dismissal of both claims. The court of appeals upheld the decision of the lower court, but did not rewrite the complaint. The complaint remains as pled, and the civil conspiracy claim did not and cannot survive because no interceding action by the court has changed the fact that Appellant failed to plead special damages.

For these reasons, Appellant's Petition for Rehearing should be denied.

III. THE MERE FACT THAT APPELLANT'S CLAIM FOR CIVIL CONSPIRACY WAS AGAINST THE INDIVIDUAL RESPONDENTS DOES NOT TRANSFORM HER CAUSE OF ACTION INTO A SUSTAINABLE ONE.

Even if the court were to consider Appellant's argument that she pled special damages in her cause of action for civil conspiracy, simply because this claim was brought against different defendants, the court should nonetheless deny Appellant's Petition for Rehearing. First, unlike the appellants in Allegro v. Scully, 418 S.C. 24, 791 S.E.2d 140 (2016), Appellant here did not move to argue against the precedent in Todd, and cannot now do so in her Petition. Although Appellant did cite to the Allegro dissent in her Final Brief, she concluded her argument there by stating that "[t]his court need not address the propriety of the special damages element, as Paradis properly and sufficiently plead special damages. (Appellant Final Brief, p. 14).

Despite the Allegro dissent, the elements of an action for civil conspiracy specifically require a plea for special damages, and Appellant failed to plead them in her complaint. Appellant fails to cite any case law that supports her contention that a claim for civil conspiracy, lodged

against entities who are not specifically named in any other tort claims, need to include a claim for special damages. Accordingly, Appellant's Petition should be denied.

IV. THE COURT OF APPEALS EMPLOYED THE PROPER STANDARD OF REVIEW FOR DECIDING A MOTION TO DISMISS UNDER RULE 12(b)(6), SCRC.

The appellate court correctly reviewed the circuit court's dismissal of Appellant's complaint, giving her all appropriate latitude in bringing her claim for civil conspiracy. Paradis, 2018 WL 3636581, at *1. However, the court of appeals found that Appellant's claim for civil conspiracy was insufficient to entitle to her any relief even under this standard. Id. at *5. Because Appellant fails to state with particularity how the court of appeals misapplied this standard of review, her Petition for Rehearing must be denied.

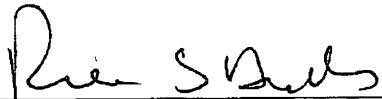
V. THE COURT OF APPEALS CORRECTLY DECLINED TO REVERSE THE CIRCUIT COURT'S REFUSAL TO GRANT APPELLANT LEAVE TO AMEND HER COMPLAINT.

Again, Appellant misapprehends the purpose of a Petition for Rehearing, and fails to illustrate how the court of appeals failed to assign error to the circuit court in denying Appellant's motion for leave to amend her Complaint. Rather, she contends that her damages for "ostracism" and "blacklisting" as a teacher are different from those suffered by other types of employees allegedly subject to a civil conspiracy by their employers. However, in properly pleading a cause of action for civil conspiracy, Appellant had to plead separate special damages as compared to those suffered as a result of her defamation claim, *not* as compared to those sustained by other types of employees. The court of appeals held that these "reputational damages are precisely the damages one would expect from defamatory statements." Id. Appellant fails to specifically demonstrate how the court erred in likening the damages alleged in both the defamation and civil

conspiracy claims. Thus, Appellant's Petition for Rehearing on her motion to amend her complaint should be denied.

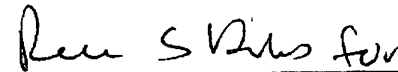
CONCLUSION

For all these reasons, Appellant's Petition for Rehearing should be denied, and the decision of the South Carolina Court of Appeals should stand as issued.



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Charleston, South Carolina
September 17, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge
Charleston County

Case No. 2015-CP-10-05093
Appellate Case No. 2016-001337

Leisel Paradis Appellant,

v.

Charleston County School District, James Island Charter High School, Robert Bohnstengel, and
Stephanie Spann, in their individual capacities Respondents.

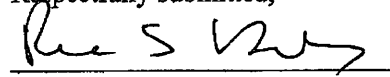
PROOF OF SERVICE

I do hereby certify that on September 17, 2018 I have served all counsel of record in this
action with a copy of the documents herein below specified by mailing a copy of the same by
United States mail, postage prepaid, to the following address:

Documents: **Respondents' Return to Appellant's Petition for Rehearing
Proof of Service**

Counsel Served: J. Lewis Cromer, Esquire
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Respectfully submitted,



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September 17, 2018

THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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Case No. 2016-001337
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RECEIVED
SEP 24 2018
SC Court of Appeals

Leisel Paradis Appellant

v.

Charleston County School District, James Island Charter High School, Robert Bohnstengel, and
Stephanie Spann, in their individual capacities, ... Respondents

**APPELLANT'S REPLY TO RESPONDENTS' RETURN
TO APPELLANT'S PETITION FOR REHEARING**

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Attorneys for Appellant

This Court affirmed the grant of a motion to dismiss on August 1, 2018 on Petitioner/Appellant Leisel Paradis' claims of defamation against Respondents Charleston County School District and James Island Charter High School and civil conspiracy against Respondents Robert Bohnstengel and Stephanie Spann. Specifically, the Court determined that Paradis' defamation claim, related to her placement on a performance improvement program, was foreclosed by the S.C. Code Ann. § 15-78-60(5) (discretionary immunity) because the entity respondents had the explicit statutory authority to place her on that program and that Paradis' conspiracy claim against the individual respondents failed for want of special damages. Paradis filed a Petition for Rehearing on August 16, 2018. Paradis only challenges the conspiracy ruling and has proffered the following specific arguments:

1. Special damages are not or should not be required to plead a conspiracy claim.
2. Now, having conceded her sole other claim, Paradis' conspiracy damages are sufficient.
3. Paradis' damages were special damages because they were the only damages sought against the Individual Respondents.
4. This Court's finding that Paradis did not plead special damages misapplied the standard of review.
5. Paradis should have been given leave to amend [the conspiracy claim].

(Petition for Rehearing p. 1). Respondents filed a Return to that petition on September 17, 2018. Paradis, as directed by Rule 240(f), SCACR, briefly replies to that return and would respectfully show the Court that the above grounds for rehearing are appropriate and merit rehearing.

1. This Petition is Proper.

The Respondents, before addressing the grounds for Paradis' petition, initially argue that her petition does not comply with Rule 221(a), SCACR. Rule 221(a) requires that a petition "state with particularity the points supposed to have been overlooked or misapprehended by the court." Paradis'

petition does so. Paradis makes five specific arguments, of those arguments: four arguments¹ were all raised and, from her perspective, overlooked or misapprehended by the Court and a fifth argument (argument 2 in the petition—that special damages are no longer an issue because Paradis does not challenge the Court’s defamation determination) became apparent based on the procedural posture of this case.

Respondents, though they present this introductory, technical argument as broadly dispositive, are primarily concerned with the latter argument. Respondents attempt use the Court’s admonition against raising arguments that “losing parties have overlooked or misapprehended” to foreclose Paradis’ petition. (Return p. 1); *citing, Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234, 238 (1933). Respondents proffer a false analogy. Paradis, in arguing that her decision not to challenge this Court’s defamation ruling renders the special damages problem irrelevant, is not positing an argument she overlooked or misapprehended; rather, she is making an argument that arises now because she did not challenge the Court’s ruling on her defamation claim. Contrary to the Respondents’ suggestion, neither the *Arnold* decision nor Rule 12, SCRCF dictate that the Court or a litigant must ignore the changing legal landscapes of a case.

The difference between why Paradis challenged the Circuit Court’s defamation decision but does not challenge this Court’s ruling on the same claim informs the present procedural posture and supports Paradis’ ability to raise the argument at issue. The proposed order signed by the Lower Court relied on the demurrer standard of review, based its defamation ruling on inapplicable pre-tort claims act case law, and did not cite to a specific S.C. Code Ann. § 15-78-60 exception to the South Carolina Tort Claims Act’s waiver of immunity in its determination that the entity respondents were immune

¹ Those four arguments, as ordered in the Petition, being: (1) her challenge to the *Todd* rule; (3) her argument that the special damages requirement is met against Respondents Bohnstengel and Spann because conspiracy is the only action against those Respondents; (4) her Standard of Review argument; and (5) her Leave to Amend argument)

from suit. This Court's defamation decision was based on a specific tort claims act exception, was supported by governing case law, and did not incorporate the demurrer standard of review. Thus, this Court essentially fixed the Lower Court's defamation ruling and rendered Paradis' earlier justifiable defamation arguments moot. The Respondents' argument that Paradis' Petition did not comply with Rule 221(a), SCACR, within the above context, is unsupported, fosters an inequity, and should be disregarded.

2. Respondents' Specific Arguments are Unpersuasive.

Paradis, having addressed Respondents' attempt to thwart her Petition on a technicality, now replies to the Respondents' specific response to her arguments.

2.1. The vulnerability of *Todd* as applied to special damages is readily ascertainable.

Paradis, though she maintained she pled special damages, challenged the applicability of the *Todd* rule on brief. (Initial Brief pp. 13-14), (Reply Brief pp. 8-9, fn. 5); *citing, Allegro v. Inc.. v. Scully*, 418 S.C. 24, 791 S.E.2d 140 (2016); *see also, Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 292, 278 S.E.2d 607, 611 (1981); *citing* 15A C.J.S. Conspiracy § 33, at 178. Thus, this is not a new argument as Respondents suggest. (Return p. 2). Moreover, when the merits of Paradis' argument on *Todd* are considered they warrant rehearing and reversal. *Todd* relied on 15A C.J.S. Conspiracy § 33 to instill special damages as a pleading requirement; however, that authority plainly dealt with damages and election of remedies as opposed to pleading:

Where the particular acts charged as a conspiracy are the same as those relied on as the tortious act or actionable wrong, plaintiff cannot recover damages for such act or wrong, and recover likewise on the conspiracy to do the act or wrong.

15A C.J.S. *Conspiracy* § 33. Because *Todd* and its progeny mistakenly imposed a pleading requirement with respect to an issue dealing with the election of remedies, the *Todd* rule on special damages should be reversed and Paradis' Petition for Rehearing should be granted.

2.2. The posture of this case renders any asserted deficiency with special damages irrelevant.

The Respondents, with respect to Paradis' argument that special damages is no longer an issue because her sole remaining claim is conspiracy, rehash their introductory argument. Paradis, for the reasons discussed at section 1 above, can appropriately argue that special damages are no longer at issue because she no longer pursues her defamation claim. The Respondents have failed to cite to any applicable authority to the contrary. Therefore, the *Todd* rule cannot foreclose Paradis' conspiracy claim because *Todd* and its progeny were specifically concerned with duplicative damage allegations and the purported problem of duplicity has been eviscerated by this Court's unchallenged defamation holding. *See, Todd*, 278 S.E.2d at 611 (1981) ("Todd seeks damages in his first four causes of action for the same acts incorporated by the fifth cause. He is therefore precluded from seeking damages for the same acts yet again.").

2.3. That the individual respondents were the only conspiracy defendants renders any asserted deficiency with special damages irrelevant.

Respondents argue here that the requirement that special damages be pled applies to an entire action even where conspiracy is the only claim pled against a defendant or defendants. That argument is made without precedential support.² This Court in *Hackworth v. Greywood at Hammett* and the Supreme Court's decision in *Todd* both dealt with duplicative damages alleged across multiple claims against the same party or parties. *See, Todd*, 278 S.E.2d 607; *and, Hackworth*, 385 S.C. 110, 682 S.E.2d 871 (Ct. App. 2009). This case is distinct since the only claim brought against Respondents Bohnstengel and Spann is conspiracy.³

² Respondents, to the extent they argue *Allegro* supports their argument because it reversed the denial of a JNOV on the conspiracy claim against Petitioner Corbin (who was only sued for conspiracy), overlooks the fact that the *Allegro* majority did not address this issue.

³ Respondents, in this section, also appear to argue that Paradis' *Todd* argument is not preserved because she did not file a motion to argue against precedent. (Return p. 3). This argument is misplaced as it does not apply to the argument that special damages are not at issue against the conspiracy respondents. Furthermore, Paradis did preserve her argument on this issue on brief and before the

2.4. The Court's special damages ruling naturally required drawing inferences in favor of the Individually Respondents.

Respondents make a strawman argument that Paradis "fail[ed] to state with particularity how the court of appeals misapplied [the standard of review]". (Return p. 4). Paradis specifically argued on this point that the Court's determination that her defamation and conspiracy damages, which are different in substance and form (R. pp. 23-24), were "precisely the damages one would expect from defamatory statements" required an impermissible inference to be drawn in favor of the Respondents. This is a valid and specific argument for rehearing and the Respondents effort to obscure the issue by creating a strawman should be disregarded.

2.5. The Court, at worst, should have given Paradis leave to amend.

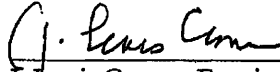
Respondents argument on Paradis' Petition for leave to amend simply restates the above argument regarding the standard of review and crafts another strawman conclusively stating that Paradis "fail[ed] to illustrate how the court [erred in denying her leave to amend]". This, like Respondents' prior strawman argument, should be disregarded. Paradis did directly challenge the Court's denial of leave to amend in her Petition by targeting the Court's determination that she did not proffer proposed changes against the specific explanations of her special damages that she provided on oral argument. (Petition pp. 8-9). Paradis has shown the Court that an amendment would cure the asserted deficiencies and she should be given a rehearing on her request for leave to amend.

3. Conclusion

Paradis, based on the above and her initial Petition for Rehearing, respectfully asks this Court to grant her a rehearing and ultimately reverse the Circuit Court's decision as to civil conspiracy.

Lower Court. (R. pp. 82-83), (Appellant Brief pp. 13-14). Moreover, Respondents have failed to cite to any precedent supporting its contention that a Rule 217, SCACR motion to argue against precedent is required for issue preservation where the subject precedent is appropriately challenged on brief.

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Attorneys for Appellant

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September 24, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson Jr., Circuit Court Judge

Case No. 2015-CP-10-5093

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SC Court of Appeals

Leisel Paradis Appellant

v.

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..... Respondents.

PROOF OF SERVICE

I certify that I, the undersigned employee of Cromer Babb Porter & Hicks, LLC, caused to have served Appellant's Reply to Respondents' Return to Appellant's Petition for Rehearing on counsel for Respondents by depositing a copy of it in the United States Mail, postage prepaid, on September 24, 2018, addressed to Rene S. Dukes, Esquire of Rosen, Rosen, & Hagood, LLC, PO Box 893, Charleston, SC 29402 and Bob J. Conley of Cleveland & Conley, LLC, 171 Church St., Suite 310, Charleston, SC 29401.

[Signature Block on Next Page]

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September 24, 2018
Columbia, South Carolina

The South Carolina Court of Appeals

Leisel Paradis, Appellant,

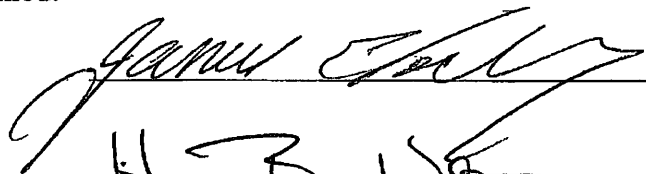
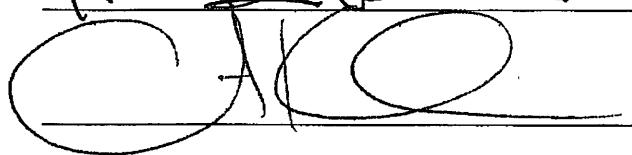
v.

Charleston County School District, James Island Charter High School, Robert Bohnstengel and Stephanie Spann, in their individual capacities, Respondents.

Appellate Case No. 2016-001337

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C. J.
 J.
 J.

Columbia, South Carolina

cc:

J. Lewis Cromer, Esquire
Rene Stuhr Dukes, Esquire
Bob J. Conley, Esquire

FILED

October 18, 2018

James Paul Porter, Esquire
Emmanuel Joseph Ferguson, Esquire
Julie J. Armstrong