

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Benjamin Culbertson, Circuit Court Judge

Case No. 2019-001749

Colleen Kennedy,

RECEIVED
DEC 05 2019
Appellant, SC Court of Appeals

v.

South Carolina Technical College System & Horry-Georgetown Technical College,

Respondents.

RESPONDENTS' RETURN TO APPELLANT'S MOTION TO REINSTATE APPEAL

On November 21, 2019, Colleen Kennedy ("Appellant") filed Appellant's Motion to Reinstate Appeal (Appellant's "Motion to Reinstate"). Respondents South Carolina Technical College System & Horry-Georgetown Technical College, through their undersigned counsel, submit this Return to Appellant's Motion to Reinstate ("Respondents' Return"). For the reasons stated below, Appellant's Motion to Reinstate should be denied.

RELEVANT PROCEDURAL HISTORY

On August 5, 2019, the Circuit Court filed its Order granting Respondents' Motion for

Summary Judgment.¹ On August 15, 2019, Appellant filed her Motion to Reconsider.² Subsequently, on September 25, 2019, the Circuit Court denied Appellant's Motion to Reconsider.³ Thereafter, on October 15, 2019, Appellant filed her Notice of Appeal.⁴

On October 21, 2019, the Deputy Clerk for this Court sent a letter to counsel for Appellant to confirm receipt of Appellant's Notice of Appeal.⁵ Further, the letter advised all parties "that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR)." By separate letter, on October 21, 2019, the Deputy Clerk for this Court informed counsel for Appellant her Notice of Appeal was deficient and ordered Appellant to correct the noted deficiencies by October 31, 2019.⁶ Specifically, the Deputy Clerk noted the following deficiencies:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, the format of the notice of appeal caption should match your proof of service.
- Please file an amended notice of appeal that confirms strictly with Rule 203, SCACR.

Subsequently, on November 18, 2019, the Deputy Clerk for this Court sent another letter to counsel for Appellant.⁷ The November 18, 2019, letter informed counsel for Appellant the deadline to order the transcript of the July 24, 2019, hearing on Respondents' Motion for Summary Judgment expired. The letter states:

¹ Exhibit 1 (August 5, 2019, Order).

² Exhibit 2 (August 1, 2019, Motion to Reconsider).

³ Exhibit 4 (September 25, 2019, Order).

⁴ Exhibit 5 (October 15, 2019, Notice of Appeal).

⁵ Exhibit 6 (October 21, 2019, Letter of Receipt of Notice of Appeal.).

⁶ Exhibit 7 (October 21, 2019, Letter Noting Deficiencies Within Notice of Appeal).

⁷ Exhibit 8 (November 18, 2019, Letter).

“[w]ithin ten days of the date of this letter, you [Appellant] must file a copy of the letter showing that you have timely ordered the transcript from the court reporter. If you have not timely ordered the transcript, you must serve and file a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the SCACR, along with a copy of your letter addressed to the court reporter.”

On November 19, 2019, this Court entered an Order dismissing the appeal due to Appellant’s failure to amend her Notice of Appeal as required by the Court’s October 21, 2019, letter.⁸ The Order dismissing the appeal states:

“Appellant has failed to amend the notice of appeal and correct the deficiencies as requested in the Court’s correspondence dates October 21, 2019 and as required by Rule 267 and 203 of the South Carolina Appellate Court Rules, SCACR. Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.”⁹

On November 21, 2019, counsel for Appellant sent an email to Natalie Dahl (“Dahl”). Dahl was the court reporter for the July 24, 2019, hearing on Respondents’ Motion for Summary Judgment. The November 21, 2019, email to Dahl contained an attachment of a “Transcript Request Form.”¹⁰ On November 21, 2019, Appellant filed her Motion to Reinstate.

LEGAL STANDARD

“Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same

⁸ Exhibit 9 (November 19, 2019, Order).

⁹ The Court’s November 19, 2019, Order does not dismiss the appeal based on Appellant’s failure to order the transcript of the July 24, 2019, hearing.

¹⁰ Exhibit 10 (November 21, 2019, Email to Dahl). The email was sent November 21, 2019. However, the “Transcript Order Form” attached to the email is dated November 19, 2019.

force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.” Rule 260, SCACR.

ARGUMENT

I. Appellant’s Motion to Reinstate Fails to Comply with Rule 240(c), SCACR

Rule 240, SCACR, sets forth the requirements of all motions filed in this Court:

“All motions or petitions filed in an appellate court shall be in writing, shall state the grounds thereof, and shall comply with the requirements of Rule 267. The pages of the motion or petition and all supporting documents shall be consecutively numbered. Each motion or petition shall include the following:

- (1) A certificate or affidavit of service reflecting the date of service upon all parties. The original certificate or affidavit of service must be filed with the original motion or petition.
- (2) A memorandum with citation of authorities in support of the motion.
- (3) Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions.” Rule 240, SCACR.

In her Motion to Reinstate, Appellant fails to comply with Rule 240(c)(2) and (3), SCACR, in several respects. First, Appellant does not cite any authority in support of her Motion to Reinstate. Second, Appellant relies on “facts” in support of her Motion to Reinstate without providing the Court with “affidavits and other documents in support of [her] positions,” as required by Rule 240(c), SCACR.

For example, in Paragraphs 5 and 6 of the Motion to Reinstate, Appellant contends her counsel did not receive the October 21, 2019, letter notifying Appellant her Notice of Appeal was

deficient. However, Appellant did not file an affidavit in support of her assertion the October 21, 2019, letter was not received by counsel for Appellant.

Further, in Paragraph 3 of the Motion to Reinstate, Appellant contends her counsel ordered a copy of the transcript of the July 24, 2019, Circuit Court hearing on Respondents' Motion for Summary Judgment. The Motion to Reinstate further contends counsel for Appellant inadvertently emailed Dahl, the court reporter, using an incorrect email address. However, Appellant's Motion to Reinstate does not contain the date she contends her counsel initially sent a request to Dahl and Appellant does not provide any supporting documents to show her initial attempt to order the transcript was timely.¹¹

For these reasons, Appellant's Motion to Reinstate fails to comply with Rule 240(c), SCACR, and, therefore, should be denied.

II. Appellant Failed to Comply with the Court's October 21, 2019, Letter

"Counsel is advised that the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review." *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).

¹¹ By way of example, Appellant does not attach a copy of her initial transcript order form, an email showing Dahl's incorrect email address, or an email requesting a transcript of the hearing from a court reporter other than Dahl. Moreover, Rule 207, SCACR, requires Appellant to contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter. Appellant provides no documents, in particular an email, supporting her position she timely filed a request to order the transcript.

In *Henning*, appellant's initial brief failed to comply with the technical requirements of the South Carolina Appellate Court Rules and respondent moved to dismiss the appeal.¹² The South Carolina Supreme Court did not grant respondent's motion to dismiss but, instead, allowed appellant fifteen days to file a brief that conformed to the requirements of the Rules. The Court held, "[a]lthough this Court would be completely justified in dismissing this appeal based on appellant's numerous violations of the Rules, we decline to do so and deny the motion to dismiss as to [appellant]." *Henning*, 307 S.C. at 437–38, 415 S.E.2d at 794. "Instead, appellant shall, within fifteen (15) days of this order, serve and file an initial brief that does fully comply with Rule [208], SCACR." *Id.*

Here, like in *Henning*, Appellant was given notice and opportunity to correct the noted deficiencies prior to dismissal of her appeal. The Court only dismissed the appeal after Appellant failed to correct the noted deficiencies within the extended deadline provided by the Court. The October 21, 2019, letter from the Court required Appellant to correct the deficiencies noted her Notice of Appeal "within ten (10) days of the date of [the] letter." Appellant failed to amend the Notice of Appeal and does not provide the Court with any supporting affidavits or documents to show she did not receive the Court's October 21, 2019, letter.¹³

In summary, Appellant did not comply with Rule 267(a), SCACR. Further, Appellant did not provide the Court with any affidavit or documents to support her contention she did not receive the Court's October 21, 2019, letter. Therefore, Appellant's Motion to Reinstate should be denied.

¹² In *Henning*, the Court cited appellant's noncompliance with Rules 207 and 208, SCACR. In 1992, when *Henning* was decided, it appears the rules cited by the Court were most analogous to the current Rules 208 and 209, SCACR.

¹³ Appellant did not submit an affidavit from any person supporting her position the October 21, 2019, letter was not received by counsel for Appellant.

III. Appellant Did Not Comply with the Court's November 18, 2019, Letter

“Where a transcript of the proceeding must be prepared by the court reporter, appellant shall, within the time provided for ordering the transcript, make satisfactory arrangements (including agreement regarding payment for the transcript), in writing with the court reporter for furnishing the transcript. In appeals from the court of common pleas [...] the transcript must be ordered within ten (10) days after the date of service of the notice of appeal. [...] Appellant shall contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.” Rule 207(a)(1), SCACR (emphasis added).

“In addition to providing notice as set forth above in paragraphs (a)(1) and (a)(5), where an appellant is represented by counsel, counsel shall provide copies of all correspondence with a court reporter via electronic means as specified by Order of the Supreme Court. Court reporters shall also provide copies of all correspondence and extension requests via electronic means as specified by Order of the Supreme Court.” Rule 207(a)(7), SCACR (emphasis added).

The Court's November 18, 2019, letter to Appellant required Appellant 1) “file a copy of the letter showing that [she] timely ordered the transcript from the court reporter” or 2) “file a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the SCACR, along with a copy of [Appellant's] letter addressed to the court reporter.” Rule 207, SCACR, requires the transcript from a proceeding in the court of common pleas to be ordered within ten days after the date of service of the notice of appeal.

Here, Appellant filed her Notice of Appeal on October 15, 2019. Accordingly, the deadline to order the transcript of the July 24, 2019, hearing on Respondents' Motion for Summary

Judgment was October 25, 2019. Appellant ordered the transcript from Dahl on November 21, 2019, twenty-seven days beyond the deadline required by Rule 207, SCACR.¹⁴

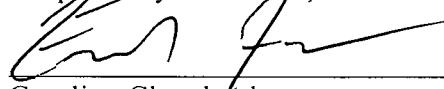
More important, Appellant did not file a copy of the letter showing she timely ordered the transcript from Dahl and Appellant did not file a motion requesting permission to order the transcript outside of the filing deadline. Appellant did not provide the Court with any documents to support her contention she timely ordered the transcript of the July 24, 2019, hearing.¹⁵

In summary, Appellant did not comply with Rule 207, SCACR, or the Court's November 18, 2019, letter. In particular, Appellant did not timely order a transcript of the July 24, 2019, hearing. Moreover, Appellant did not file a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207, SCACR. Therefore, Appellant's Motion to Reinstate should be denied.

CONCLUSION

For the reasons above, Respondents' respectfully request the Court deny Appellant's Motion to Reinstate.

Respectfully submitted,



Caroline Cleveland

Bob J. Conley

Emmanuel J. Ferguson (SC Bar# 81431)

CLEVELAND & CONLEY, LLC

171 Church Street, Suite 310

Charleston, SC 29401

Telephone: (843)577-9626

¹⁴ Exhibit 10 (November 21, 2019, Email to Dahl).

¹⁵ For example, Appellant did not file copies of correspondence with the court reporter, counsel for Respondents, court administration, or the clerk of this Court as required by Rule 207, SCACR, showing a timely request to order the transcript.

Facsimile: (843)577-6672
ccleveland@clevelandlaborlaw.com
bconley@clevelandlaborlaw.com
eferguson@clevelandlaborlaw.com

ATTORNEYS FOR RESPONDENTS

December 2, 2019

EXHIBIT 1

Order – August 5, 2019

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NO.: 2018-CP-26-1696
)	
Coleen R. Kennedy,)	
)	
Plaintiff,)	
v.)	ORDER
)	
South Carolina Technical College)	
System & Horry-Georgetown)	
Technical College,)	
)	
Defendants.)	
_____)	

THIS MATTER came before the Court on Defendants Horry Georgetown Technical College’s (“HGTC”) and the South Carolina Technical College System’s (“SCTCS”) (collectively, “Defendants”) Motion for Summary Judgment (the “Motion”) filed on February 25, 2019. The Motion requested the Court dismiss the Complaint filed by Plaintiff, Colleen Kennedy (“Kennedy”). Kennedy’s Complaint alleges a single cause of action for breach of contract.¹ The Motion was heard on July 24, 2019. Present on behalf of Kennedy was Aaron Wallace, Esq. Present on behalf of Defendants was Emmanuel Ferguson, Esq. Based on the pleadings, discovery, legal memoranda, undisputed facts, record before the Court and arguments of counsel, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

This is a breach of an employment contract case and the relevant, material facts are not in dispute. HGTC previously employed Kennedy as a nursing instructor from 2007 until December 31, 2016. Kennedy was working for HGTC pursuant to the provisions of S.C. Code Ann. § 9-1-

¹ Kennedy voluntarily dismissed her cause of action for breach of contract with fraudulent intent.

2210, the Teacher and Employee Retention Incentive Program (“TERI”).² Under TERI, state employees participating in the South Carolina Retirement System (the “Retirement System”) were allowed to “retire” for purposes of participating in the Retirement System but continue their employment with a participating employer for a period not to exceed five years.³ The day before the fifth annual anniversary of Kennedy’s participation in the TERI program was December 31, 2016.

Nearly one year prior, on January 5, 2016, Kennedy sent an email to Tara Lahnen (“Lahnen”), the Assistant Director of Human Resources at HGTC. In her email, Kennedy informed Lahnen of Kennedy’s desire to continue her employment beyond the expiration of her participation in the TERI program. The same day, Lahnen responded to Kennedy’s email with HGTC’s re-employment procedure under TERI:

RE-EMPLOYMENT

The System Office/College [HGTC] is not required to re-hire an employee whose TERI program period has ended. A previous TERI program participant maybe hired into any type of position (FTE position, Temporary Grant, Time-Limited, or Temporary), and shall be eligible for benefits as they relate to that position. Any decisions to rehire a previous TERI program participant should be made in a non-discriminatory manner. (emphasis in original.)

Thereafter, on January 18, 2016, Kennedy sent a letter to H. Neyle Wilson (“President Wilson”), the President of HGTC. In her letter, Kennedy again expressed her desire to “return full time in January 2017,” beyond her participation in the TERI program in December 2016. Subsequently, on January 20, 2016, Wilson sent a letter to Kennedy informing her that her participation in the TERI program will end on December 31, 2016. In particular, Wilson wrote the

² TERI was repealed July 1, 2018.

³ Section 9-1-2210(H), now repealed, stated, “[a] program participant shall terminate employment no later than the day before the fifth annual anniversary of the date the member commenced participation in the program.”

following: “[a]t the end of your TERI, if you are interested in continuing your employment, you may apply for the positions that we have available.”

The Assistant Vice President for Academic Affairs for Nursing and Associated Healthcare Science, Dr. Christy Bailey (“Dr. Bailey”) also received Kennedy’s January 18, 2016, letter. On January 20, 2016, Dr. Bailey emailed Kennedy and informed her of HGTC’s process related to employees leaving the TERI program. Dr. Bailey’s email to Kennedy, states, in part:

“[o]nce your TERI is complete the College [HGTC] is required to advertise the position. I have already been sent a reminder to complete the vacancy for this coming fall so that it may be advertised. All employees that TERI and then desire to continue in a full-time employment position must apply to the position”

On August 25, 2016, Kennedy acknowledged receipt of an August 22, 2016, letter⁴ from Dr. Marilyn Fore (“Dr. Fore”), Senior Vice President for HGTC, regarding Kennedy’s work as a faculty member. Dr. Fore’s letter informed Kennedy she, and all other unclassified faculty members would receive a 3.25% increase in their salaries effective August 22, 2016. Dr. Fore’s letter identifies Kennedy’s salary for the 2016-2017 school year and states:

“[a]s a faculty member you are an employee of the State of South Carolina and the terms and conditions of this letter as set forth in applicable laws, rules and regulations of the Budget and control board, statewide policies and procedures of the State Board for Technical and Comprehensive Education and the policies and procedures of the College.”

Consistent with TERI and HGTC policies, Kennedy’s employment with HGTC ended effective December 31, 2016, by way of her resignation/retirement under TERI. Specifically, Kennedy signed a “Termination Checklist” on October 25, 2016. The “Termination Checklist” identifies Kennedy’s retirement date as December 31, 2016, and the phrases “Retirement TERI

⁴ Hereafter, “the August 22, 2016, Letter.”

end” and “TERI ending” are written on the checklist. During her deposition, Kennedy testified she read the “Termination Checklist” and the form was filled out when she signed it.

Also consistent with TERI, the policies of State Board for Technical and Comprehensive Education, and the policies of HGTC, Kennedy applied for and competed with other applicants for the advertised position as a nursing instructor with HGTC. However, HGTC did not select Kennedy for the then open position. Kennedy did not apply for any other open positions and her employment with HGTC ended December 31, 2016.

Kennedy asserts Dr. Fore’s August 22, 2016, Letter constituted an employment contract between she and HGTC.⁵ Kennedy asserts that despite the statutory mandates of TERI and requirements of HGTC policies, Dr. Fore’s August 22, 2016, Letter to Kennedy contractually bound HGTC to continue her employment beyond 2016 and into the 2017 academic year, including the 2017 summer term.

LEGAL STANDARD

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.* In determining whether summary judgment is appropriate, the evidence must be viewed in the light most favorable to the nonmoving party. *Id.* The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. *Baughman v. American Telephone and Telegraph, Inc.*, 306 S.C. 101, 410 S.E.2d 537 (1989).

⁵ The August 22, 2016, Letter is the only communication Kennedy alleges constitutes a contract.

However, “[w]ith respect to an issue on which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by ‘showing’ – that is, pointing out to the [trial] court – that there is absence of evidence to support the non-moving party’s case.” *Id.* at 115, 410 S.E.2d at 544 (quoting *Celotex Corporation v. Catrett*, 477 U.S. 317, 325 (1986)). In that case, the “moving party need not ‘support its motion with affidavits or other similar materials *negating* the opponent’s claim.” *Id.* (quoting *Celotex* at 323) (emphasis in original). “Once the moving party has carried its initial burden, the opposing party must . . . ‘do more than simply show that there is some metaphysical doubt as to the material facts,’” and “‘must come forward with ‘specific facts showing there is a genuine issue for trial.’” *Id.* (quoting *Matshusita Electrical Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)).

CONCLUSIONS OF LAW

For the purposes of the Motion only, Defendants did not contest Kennedy’s assertion the August 22, 2016, Letter was a contract.⁶ Rather, Defendants contend even if the August 22, 2016, Letter was a contract for employment, there is no fact Kennedy can present to a jury of a breach. Further, Defendants contend the laws of the State of South Carolina, including TERI, and HGTC’s policies barred Kennedy’s continued employment as a matter of law without making the nursing instructor position available for other applicants. Defendants argue there is no evidence Kennedy was promised employment with HGTC after she resigned on December 31, 2016. Finally, allowing Kennedy to amend the Complaint to add a claim for promissory estoppel would be futile and prejudicial. The Court agrees.

⁶ Nonetheless, the August 22, 2016, Letter informed Kennedy she, like every other qualifying HGTC employee, will receive a 3.25% pay increase. As the issue was not raised by Defendants, this Court makes no finding as to whether the August 22, 2016, Letter is a contract.

A. **DEFENDANTS DID NOT BREACH AN EMPLOYMENT CONTRACT WITH KENNEDY**

1. **The August 22, 2016, Letter is Subject to the Laws of the State of South Carolina.**

Even assuming the August 22, 2016, Letter was a contract, it was subject to the laws of the State of South Carolina. The mandates of the TERI statute were part of the August 22, 2016, Letter to Kennedy both as a matter of law and by express reference to “applicable laws.”⁷ Further, the State Board for Technical and Comprehensive Education policies and the policies of HGTC were also part of the August 22, 2016, Letter to Kennedy by express reference to “the policies and procedures” of HGTC and the State Board for Technical and Comprehensive Education. Additionally, the “applicable laws, rules and regulations” of the State Budget and Control Board are expressly referenced and part of Dr. Fore’s August 22, 2016, Letter. Dr. Fore’s letter is unambiguous in respect to its inclusion of State Board for Technical and Comprehensive Education and HGTC polices, as well as the inclusion of the laws, rules and regulations of the State Budget and Control Board.

All these laws, rules, regulations and policies referenced by Dr. Fore are part of the August 22, 2016, Letter and, therefore, included and incorporated into Kennedy’s alleged employment contract. Additionally, as a matter of law and express reference, TERI is unambiguously part of the August 22, 2016, Letter. Notably, TERI required, as a matter of statutory law, Kennedy resign her employment “no later than the day before the fifth annual anniversary of the date the member commenced participation in the program.” S.C. Code Ann. § 9-1-2210(H). As to Kennedy, TERI

⁷ See *Inabinet v. Royal Exchange Assur. of London*, 165 S.C. 33, 36, 162 S.E. 599, 600 (1992) (“Every contract entered into in this State embodies in its terms all applicable laws of the State just as completely as if the contract expressly so stipulated.”).

required she resign her employment with HGTC no later than December 31, 2016. Defendants, in accepting Kennedy's resignation, complied with TERI and, consequently, complied with Dr. Fore's August 22, 2016, Letter to Kennedy (i.e. the alleged contract).⁸

2. There is No Evidence Defendants' Actions Breached Any Agreement Kennedy Had with Defendants.

Defendants' actions with respect to Kennedy's resignation effective December 31, 2016, and the decision to choose another applicant to fill the open position created by Kennedy's resignation, complied with TERI, the State Board for Technical and Comprehensive Education policies and HGTC policies. There is no evidence to show Defendants breached an agreement to employ Kennedy. In fact, the evidence in the record, including Kennedy's own deposition testimony, shows Kennedy resigned from her employment with HGTC on December 31, 2016. Consequently, Defendants' were required to advertise the nursing instructor position and their decision to select another applicant did not breach any employment contract with Kennedy.

Although Kennedy testified she *intended* to continue her employment with HGTC into 2017, there is no evidence Defendants *offered*⁹ Kennedy employment after her resignation on December 31, 2016. Defendants allowed Kennedy to apply and compete for available positions including the nursing instructor position.¹⁰ Consequently, Defendants complied with the August 22, 2016, Letter, including its stated incorporation of "applicable laws" and the "policies and procedures" of the State Board for Technical and Comprehensive Education and HGTC.

⁸ There is no evidence Defendants terminated Kennedy's employment. To the contrary, the only evidence in the record shows Kennedy resigned her employment by way of her "retirement" under the TERI program on December 31, 2016.

⁹ Further, there is no evidence Defendants *promised* Kennedy employment with HGTC as it relates to a promissory estoppel claim.

¹⁰ Kennedy testified she did not apply for any other positions with HGTC or the South Carolina Technical College System.

3. There is No Evidence Kennedy Was Promised Employment After Her December 31, 2016, Resignation.

Even if the August 22, 2016, Letter was a contract, there is no evidence Kennedy was promised employment subsequent to her December 31, 2016, resignation. Kennedy testified she received and understood the January 5, 2016, email from the Assistant Director of Human Resources when Kennedy was provided HGTC's TERI procedure which states, "[t]he System Office/College [HGTC] is not required to re-hire an employee whose TERI program period has ended." (emphasis in original.) Further, during her deposition, Kennedy testified she understood she would need to apply for employment with HGTC after she completed the TERI program.

Kennedy also testified she received the January 20, 2016, email from Dr. Bailey informing Kennedy her position would be advertised prior to her December 31, 2016, resignation and filled after she completed the TERI program on December 31, 2016. Moreover, Kennedy testified she received the January 20, 2016, Letter from President Wilson informing her she would need to apply for "the positions that we have available" after her December 31, 2016, resignation. Finally, Kennedy testified no one promised her she would be selected for the nursing instructor position she applied for in September 2016.¹¹

Therefore, even if the August 22, 2016, Letter was an employment contract, there is no evidence HGTC breached its agreement with Kennedy. Kennedy was required to resign her employment with HGTC by statute. The August 22, 2016, Letter clearly states the provisions of Kennedy's employment are subject to "the terms and conditions of [the August 22, 2016, Letter]

¹¹ Kennedy clearly understood the hiring process described in her correspondence with Defendants because Kennedy testified she applied for the nursing instructor position around September 2016 and interviewed for the position around October 2016.

as set forth in applicable laws, rules and regulations of the Budget and control board, statewide policies and procedures of the State Board for Technical and Comprehensive Education and the policies and procedures of the College [HGTC].” Further, HGTC was required to post the nursing instructor position and consider other applicants for the position. Finally, there is no evidence HGTC promised Kennedy a position after her December 31, 2016, resignation. These facts, viewed in a light most favorable to Kennedy, do not create a triable issue of fact to establish a cause of action for breach of contract.¹²

B. MOTION TO AMEND

1. Kennedy’s Motion to Amend is Futile.

"Although promissory estoppel is a flexible doctrine that aims to achieve equitable results, it, like all creatures of equity, has limitations." *Barnes v. Johnson*, 402 S.C. 458, 469, 742 S.E.2d 6, 11 (Ct.App.2013). "Specifically, the doctrine's elements represent a balancing between affording a remedy where contract law cannot, and ensuring the doctrine's application is not, itself, an inequity against the party estopped." *Id.* "To this end, **and particularly because promissory estoppel applies without a contract, the promise to be enforced must be unambiguous** with clearly articulated, definite terms, while the sustained injury must result from an inconsistent disposition [act] by the promisor." *Id.* at 469-70, 742 S.E.2d at 11. (emphasis added.) "Thus, promissory estoppel has broad applicability to prevent injustice, but where a promise is unclear or the alleged harms are unconnected to the inconsistent disposition [inconsistent act], the doctrine does not risk imposing its own inequity against the party sought to be estopped." *Id.*

¹² The Court’s grant of summary judgment also supports the denial of Kennedy’s Motion to Amend her Complaint to add a cause of action for promissory estoppel.

"The elements of promissory estoppel are (1) a promise unambiguous in its terms is present; (2) the party to whom the promise is made reasonably relies on it; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise." 7 S.C. Jur. Estoppel and Waiver § 14.1, citing *Woods v. State*, 314 S.C. 501, 431 S.E.2d 260 (Ct.App.1993). See also *Bishop v. City of Columbia*, 401 S.C. 661, 664, 738 S.E.2d 255, 261 (Ct.App.2013) (listing elements necessary to prove promissory estoppel); *Richardson* at 379, 769 S.E.2d 237, 241 (2015) (listing elements necessary to prove promissory estoppel).

Here, the Court finds there is no evidence HGTC made an unambiguous promise to "re-hire" Kennedy subsequent to her December 31, 2016, retirement. Further, even if Defendants made an unambiguous promise to Kennedy, there is no evidence Kennedy relied on the alleged promise or Defendants failed to deliver on the promise.¹³ Stated differently, and in light of a potential claim for promissory estoppel, it would be futile to allow Kennedy to amend her Complaint to add a claim for promissory estoppel when the Court has found there is no evidence of a broken or unfulfilled promise. Kennedy, in her Memorandum in Opposition to Defendants' Motion for Summary Judgment, makes a two-sentence argument in support of her motion to amend:

"As is indicated in the Section 1 deposition excerpts, it is clear that Ms. Kennedy relied upon the Promissory averments of the Defendants with respect to its *contractual* guarantees to Plaintiff. To the extent that the Defendants are attempting to avoid Plaintiff's contract claims, it is apparent that the evidence in this case supports an additional claim of Promissory Estoppel based upon Defendants' own documented *contract* provided to Plaintiff." (emphasis added.)

¹³ For purposes of their Summary Judgment Motion, Defendants do not contest the existence of a contract. Therefore, even if there was evidence Kennedy relied on a promise she would be employed beyond 2016, there is no evidence the promise was broken because Kennedy resigned her position under TERI.

Here, Kennedy relies on the August 22, 2016, Letter as the basis of her promissory estoppel claim. Kennedy provides no evidence beyond the August 22, 2016, Letter to support her claim Defendants should be required to employ Kennedy beyond her December 31, 2016, retirement.

As discussed above, Kennedy acknowledged she was informed by at least *three* people- the President of HGTC, the Assistant Vice President for Academic Affairs at HGTC, *and* the Assistant Director of Human Resources at HGTC- that Kennedy would have to apply for and compete with other applicants for any available positions after her participation in the TERI program ended. Further, Kennedy testified no one at HGTC promised her she would be selected for the nursing position she applied for in September 2016. There is no evidence HGTC made an unambiguous promise Kennedy would be hired for a position at HGTC after she retired from her employment with HGTC on December 31, 2016, and no evidence relied on any promise.¹⁴

This Court finds no evidence to create a triable issue of fact to establish a cause of for promissory estoppel. Therefore, allowing Kennedy to amend her Complaint to add a cause of action for promissory estoppel would futile. *See McCarthy v. Cliffs Communities, LLC*, No. 2015-UP-436, 2015 WL 4945392, at *1 (S.C. Ct. App. Aug. 19, 2015) (citing *Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct.App.2010) *rev'd on other grounds*, 401 S.C. 1, 736 S.E.2d 242 (2012)) (“Although leave to amend should generally be ‘freely given,’ this court has held that it may be denied where the proposed amendment would be futile.”).

2. Kennedy’s Motion to Amend is Not Timely.

Kennedy filed her Summons and Complaint alleging a cause of action for breach of contract and breach of contract with fraudulent intent on March 15, 2018. Defendants filed a

¹⁴ There is no evidence Kennedy rejected an offer of employment, providing the same or better compensation and benefits, elsewhere in reliance of her belief the August 22, 2016, Letter was a promise HGTC would employ her for the 2017 school year.

Motion to Dismiss on April 20, 2018, seeking to dismiss the claim for breach of contract with fraudulent intent. On May 21, 2018, Defendants filed their Memorandum in Support of Plaintiff's Motion to Dismiss. Thereafter, on May 31, 2019, the Court dismissed Kennedy's claim for breach of contract with fraudulent intent.¹⁵

On June 12, 2018, Defendants filed their Answer. On February 21, 2019, Defendants took Kennedy's deposition.¹⁶ Subsequently, on February 25, 2019, Defendants filed their Motion for Summary Judgment. On May 6, 2019, Defendants filed their Memorandum in Support of Summary Judgment. On May 9, 2019, Kennedy filed her *first* Memorandum in Opposition to Defendants' Motion for Summary Judgment. Kennedy's first memorandum did not seek to amend her Complaint.

Subsequently, on June 25, 2019, the Parties were notified the hearing on Defendants' Motion for Summary Judgment was set for July 24, 2019.¹⁷ Thereafter, on June 21, 2016, Kennedy submitted a second Memorandum in Opposition to Defendant's Motion for Summary Judgment, this time adding a request to amend under Rule 15, SCRCP. In short, Kennedy raised her motion to amend more than *fifteen months* after she filed her Complaint. Further, Kennedy's motion to amend was first raised the Friday before the scheduled hearing on Defendant's Motion for Summary Judgment.

Kennedy presented no significant factual developments that warranted the untimely amendment. Further, even if the amendment was granted, Defendants would still be entitled to summary judgment on the promissory estoppel claim. *See, Health Promotion Specialists, LLC v.*

¹⁵ Kennedy agreed to voluntarily dismiss this claim.

¹⁶ No other depositions were taken in this case.

¹⁷ The hearing on Defendants' Motion of Summary Judgment was moved from June 24, 2018, to July 24, 2019, due to a potential conflict involving the judge initially assigned to hear the Motion.

S.C. Bd. of Dentistry, 403 S.C. 623, 632, 743 S.E.2d 808, 813 (2013) (finding the circuit court properly denied party's motion to add a cause of action to its complaint because amendment did not occur after a seven year delay and the undertaking of extensive discovery, particularly when there were no significant factual developments that warranted the untimely amendment); *Collins Entm't, Inc. v. White*, 363 S.C. 546, 562, 611 S.E.2d 262, 270 (Ct.App.2005) (“[t]he prejudice that Rule 15 envisions is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it”).

3. Allowing Kennedy to Amend Would be Prejudicial to Defendants.

Kennedy’s seeks to add an additional claim for promissory estoppel. Such an amendment at this stage would be prejudicial to Defendants. *See, Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct.App.1994) (“Prejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended action.”); *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 510 (4th Cir.1986) (finding prejudice can result when a proposed amendment is offered shortly before or during trial and raises a new legal theory that would require gathering and analysis of facts not already considered by opposition).

“A contract and promissory estoppel are two separate and distinct legal theories. They ‘are two different creatures of the law; they are not legally synonymous; the birth of one does not spawn the other.’” *Satcher v. Satcher*, 351 S.C. 477, 484, 570 S.E.2d 535, 538 (Ct.App.2002) (quoting *Duke Power Co. v. S.C. Pub. Serv. Comm’n*, 284 S.C. 81, 100, 326 S.E.2d 395, 406 (1985). “Unlike a contract which requires a meeting of the minds and consideration, promissory estoppel looks at a promise, its subsequent effect on the promisee, and in certain cases bars the promisor

from making an inconsistent disposition of the property [or inconsistent act]." *Id.* at 484, 570 S.E.2d at 538-39.

Here, Defendants did not have the opportunity to gather evidence to defend a claim for promissory estoppel. Specifically, Defendants had no opportunity to engage in discovery related to reliance damages, if any, Kennedy may claim. Further, Kennedy did not present the Court with any evidence of reliance damages. Therefore, Kennedy's Motion to Amend is Denied.

CONCLUSION

For the reasons discussed, Defendants' Motion for Summary Judgment is GRANTED and Plaintiff's Motion to Amend is DENIED.

AND IT IS SO ORDERED!

August 5, 2019

Benjamin H. Culbertson
Circuit Court Judge



Horry Common Pleas

Case Caption: Coleen R Kennedy VS South Carolina Technical College System ,
defendant, et al
Case Number: 2018CP2601696
Type: Order/Summary Judgment

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

EXHIBIT 2

Motion to Reconsider – August 1, 2019

IN THE STATE OF SOUTH CAROLINA
IN THE COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
IN THE FIFTEENTH JUDICIAL CIRCUIT

Coleen R. Kennedy)
)
 Plaintiff,)
)
 vs.)
)
 South Carolina Technical College)
 System & Horry-Georgetown)
 Technical College)
 Defendants.)
 _____)

CASE NO.: 2018-CP-26-01696

**MOTION FOR RECONSIDERATION
BY THE PLAINTIFF OF THE
COURT'S DECISION TO GRANT
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Comes Now Plaintiff, by and through the undersigned, and asks that the Court reconsider its Order dated July 24, 2019, granting Defendants' Motion for Summary Judgment. For the reasons stated below, Plaintiff states that Defendants' Motion for Summary Judgment was improvidently granted and that the Court should reconsider and reverse its decision and allow Plaintiff's case to proceed through the judicial process.

1. The Court's decision to dismiss Plaintiff's claim for breach of contract was, on its face, clearly erroneous as Defendants' counsel admitted on the record that Plaintiff had a contract for employment with the Defendants. As Defendants had a contract with Plaintiff, the issue of whether that contract was breached is an issue for a jury to decide as opposed to one to be decided by the Court on Summary Judgment.
2. The Court's decision to dismiss Plaintiff's claim for breach of contract was, on its face, clearly erroneous as genuine issues of material fact exist in this case establishing that Defendants' contracted with Plaintiff for employment beyond the expiration of her TERI employment, as was both Plaintiff and Defendants' right to do.

3. The Court's decision to dismiss Plaintiff's claim for breach of contract was blatantly and clearly erroneous as genuine issues of material fact exist in this case establishing that Defendants' had an obligation to return Plaintiff to the same or substantially similar employment for the balance of her contract term upon the expiration of her TERI employment.
4. The Court improperly granted Defendants' Motion for Summary Judgment by making a factual decision best left to the jury, to wit, weighing clearly conflicting evidence in favor of Defendants regarding whether or not Plaintiff waived her contractual rights by email admissions.
5. The Court's decision to dismiss Plaintiff's case in its entirety despite Plaintiff's request for leave to amend her Complaint pursuant to Rule 15 of the South Carolina Rules of Civil Procedure to assert a claim for Promissory Estoppel is clearly erroneous as Defendants will suffer no prejudice from the amendment and the rule favors amendments when no prejudice will result to either party.

Wherefore, Plaintiff respectfully requests that this Court reconsider its decision to grant Defendants' Motion for Summary Judgment in this case and enter an order denying Defendants' Motion for Summary Judgment.

Respectfully submitted:

By: s/Donald Gist
Donald Gist (07178)
Aaron Wallace (11469)
GIST LAW FIRM, P.A.
400 North Main Street
Columbia, South Carolina 29203
Telephone: (803) 771-8007
Fax: (803) 771-0063
aaronwallace.gistlawfirm@gmail.com

dtommygist@yahoo.com
Attorneys for Plaintiff

July 31, 2019

Certificate of Electronic Notification

Recipients

Lonnesse Williams - Notification transmitted on 08-01-2019 02:00:48 PM.

Emmanuel Ferguson - Notification transmitted on 08-01-2019 02:00:48 PM.

Bob Conley - Notification transmitted on 08-01-2019 02:00:48 PM.

Aaron Wallace - Notification transmitted on 08-01-2019 02:00:48 PM.

Donald Gist - Notification transmitted on 08-01-2019 02:00:48 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP2601696

Official File Stamp: 08-01-2019 01:59:28 PM

Court: CIRCUIT COURT

Common Pleas

Horry

Case Caption: Coleen R Kennedy VS South Carolina Technical
College System , defendant, et al

Document(s) Submitted: Motion/Reconsider

Filed by or on behalf of: Aaron Vernon Wallace

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Bob J. Conley for South Carolina Technical
College System et al

Emmanuel Joseph Ferguson, Sr. for South
Carolina Technical College System et al

Donald Gist for Coleen R Kennedy

Lonnesse P Williams for Coleen R Kennedy

Aaron Vernon Wallace for Coleen R Kennedy

The following people have not been served electronically by the Court. Therefore, they must
be served by traditional means:

EXHIBIT 4

Order – September 25, 2019

Coleen R Kennedy
PLAINTIFF(S)

South Carolina Technical College System et al
DEFENDANT(S)

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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- 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 For Reconsideration filed 8/1/2019 is DENIED.

(This motion is decided on briefs without oral arguments.)

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/25/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ELECTRONICALLY FILED - 2019 Sep 25 10:40 AM - HORRY - COMMON PLEAS - CASE#2018CP2601696



Horry Common Pleas

Case Caption: Coleen R Kennedy VS South Carolina Technical College System ,
defendant, et al
Case Number: 2018CP2601696
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Certificate of Electronic Notification

Recipients

Lonnesse Williams - Notification transmitted on 09-25-2019 10:40:37 AM.

Emmanuel Ferguson - Notification transmitted on 09-25-2019 10:40:37 AM.

Bob Conley - Notification transmitted on 09-25-2019 10:40:37 AM.

Aaron Wallace - Notification transmitted on 09-25-2019 10:40:37 AM.

Donald Gist - Notification transmitted on 09-25-2019 10:40:37 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP2601696

Official File Stamp: 09-25-2019 10:40:28 AM

Court: CIRCUIT COURT

Common Pleas

Horry

Case Caption: Coleen R Kennedy VS South Carolina Technical College System , defendant, et al

Document(s) Submitted: Order/Electronic Form 4 - Plaintiff's Motion/Reconsideration is DENIED

Filed by or on behalf of: Benjamin H. Culbertson

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Bob J. Conley for South Carolina Technical College System et al

Emmanuel Joseph Ferguson, Sr. for South Carolina Technical College System et al

Donald Gist for Coleen R Kennedy

Lonnesse P Williams for Coleen R Kennedy

Aaron Vernon Wallace for Coleen R Kennedy

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

ELECTRONICALLY FILED - 2019 Sep 25 10:40 AM - HORRY - COMMON PLEAS - CASE#2018CP2601696

EXHIBIT 5

Notice of Appeal – October 15, 2019

Coleen R Kennedy
PLAINTIFF(S)

South Carolina Technical College System et al
DEFENDANT(S)

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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY
- 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 For Reconsideration filed 8/1/2019 is DENIED.
(This motion is decided on briefs without oral arguments.)

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/25/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Horry Common Pleas

Case Caption: Coleen R Kennedy VS South Carolina Technical College System ,
defendant, et al
Case Number: 2018CP2601696
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2019-09-25 09:17:45 page 3 of 3.



Horry Common Pleas

Case Caption: Coleen R Kennedy VS South Carolina Technical College System ,
defendant, et al
Case Number: 2018CP2601696
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2019-09-25 09:17:45 page 3 of 3

Coleen R Kennedy
PLAINTIFF(S)

South Carolina Technical College System et al
DEFENDANT(S)

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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- 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 For Reconsideration filed 8/1/2019 is DENIED.
(This motion is decided on briefs without oral arguments.)

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/25/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Coleen R Kennedy VS South Carolina Technical College System ,
defendant, et al
Case Number: 2018CP2601696
Type: Order/Summary Judgment

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2019-08-05 10:58:48 page 15 of 15

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Coleen R. Kennedy,)
Plaintiff,)
v.)
South Carolina Technical College)
System & Horry-Georgetown)
Technical College,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-1696

ORDER

THIS MATTER came before the Court on Defendants Horry Georgetown Technical College's ("HGTC") and the South Carolina Technical College System's ("SCTCS") (collectively, "Defendants") Motion for Summary Judgment (the "Motion") filed on February 25, 2019. The Motion requested the Court dismiss the Complaint filed by Plaintiff, Colleen Kennedy ("Kennedy"). Kennedy's Complaint alleges a single cause of action for breach of contract.¹ The Motion was heard on July 24, 2019. Present on behalf of Kennedy was Aaron Wallace, Esq. Present on behalf of Defendants was Emmanuel Ferguson, Esq. Based on the pleadings, discovery, legal memoranda, undisputed facts, record before the Court and arguments of counsel, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

This is a breach of an employment contract case and the relevant, material facts are not in dispute. HGTC previously employed Kennedy as a nursing instructor from 2007 until December 31, 2016. Kennedy was working for HGTC pursuant to the provisions of S.C. Code Ann. § 9-1-

¹ Kennedy voluntarily dismissed her cause of action for breach of contract with fraudulent intent.

2210, the Teacher and Employee Retention Incentive Program ("TERI").² Under TERI, state employees participating in the South Carolina Retirement System (the "Retirement System") were allowed to "retire" for purposes of participating in the Retirement System but continue their employment with a participating employer for a period not to exceed five years.³ The day before the fifth annual anniversary of Kennedy's participation in the TERI program was December 31, 2016.

Nearly one year prior, on January 5, 2016, Kennedy sent an email to Tara Lahnen ("Lahnen"), the Assistant Director of Human Resources at HGTC. In her email, Kennedy informed Lahnen of Kennedy's desire to continue her employment beyond the expiration of her participation in the TERI program. The same day, Lahnen responded to Kennedy's email with HGTC's re-employment procedure under TERI:

RE-EMPLOYMENT

The System Office/College [HGTC] is not required to re-hire an employee whose TERI program period has ended. A previous TERI program participant maybe hired into any type of position (FTE position, Temporary Grant, Time-Limited, or Temporary), and shall be eligible for benefits as they relate to that position. Any decisions to rehire a previous TERI program participant should be made in a non-discriminatory manner. (emphasis in original.)

Thereafter, on January 18, 2016, Kennedy sent a letter to H. Neyle Wilson ("President Wilson"), the President of HGTC. In her letter, Kennedy again expressed her desire to "return full time in January 2017," beyond her participation in the TERI program in December 2016. Subsequently, on January 20, 2016, Wilson sent a letter to Kennedy informing her that her participation in the TERI program will end on December 31, 2016. In particular, Wilson wrote the

² TERI was repealed July 1, 2018.

³ Section 9-1-2210(H), now repealed, stated, "[a] program participant shall terminate employment no later than the day before the fifth annual anniversary of the date the member commenced participation in the program."

following: “[a]t the end of your TERI, if you are interested in continuing your employment, you may apply for the positions that we have available.”

The Assistant Vice President for Academic Affairs for Nursing and Associated Healthcare Science, Dr. Christy Bailey (“Dr. Bailey”) also received Kennedy’s January 18, 2016, letter. On January 20, 2016, Dr. Bailey emailed Kennedy and informed her of HGTC’s process related to employees leaving the TERI program. Dr. Bailey’s email to Kennedy, states, in part:

“[o]nce your TERI is complete the College [HGTC] is required to advertise the position. I have already been sent a reminder to complete the vacancy for this coming fall so that it may be advertised. All employees that TERI and then desire to continue in a full-time employment position must apply to the position”

On August 25, 2016, Kennedy acknowledged receipt of an August 22, 2016, letter⁴ from Dr. Marilyn Fore (“Dr. Fore”), Senior Vice President for HGTC, regarding Kennedy’s work as a faculty member. Dr. Fore’s letter informed Kennedy she, and all other unclassified faculty members would receive a 3.25% increase in their salaries effective August 22, 2016. Dr. Fore’s letter identifies Kennedy’s salary for the 2016-2017 school year and states:

“[a]s a faculty member you are an employee of the State of South Carolina and the terms and conditions of this letter as set forth in applicable laws, rules and regulations of the Budget and control board, statewide policies and procedures of the State Board for Technical and Comprehensive Education and the policies and procedures of the College.”

Consistent with TERI and HGTC policies, Kennedy’s employment with HGTC ended effective December 31, 2016, by way of her resignation/retirement under TERI. Specifically, Kennedy signed a “Termination Checklist” on October 25, 2016. The “Termination Checklist” identifies Kennedy’s retirement date as December 31, 2016, and the phrases “Retirement TERI

⁴ Hereafter, “the August 22, 2016, Letter.”

end” and “TERI ending” are written on the checklist. During her deposition, Kennedy testified she read the “Termination Checklist” and the form was filled out when she signed it.

Also consistent with TERI, the policies of State Board for Technical and Comprehensive Education, and the policies of HGTC, Kennedy applied for and competed with other applicants for the advertised position as a nursing instructor with HGTC. However, HGTC did not select Kennedy for the then open position. Kennedy did not apply for any other open positions and her employment with HGTC ended December 31, 2016.

Kennedy asserts Dr. Fore’s August 22, 2016, Letter constituted an employment contract between she and HGTC.⁵ Kennedy asserts that despite the statutory mandates of TERI and requirements of HGTC policies, Dr. Fore’s August 22, 2016, Letter to Kennedy contractually bound HGTC to continue her employment beyond 2016 and into the 2017 academic year, including the 2017 summer term.

LEGAL STANDARD

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.* In determining whether summary judgment is appropriate, the evidence must be viewed in the light most favorable to the nonmoving party. *Id.* The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. *Baughman v. American Telephone and Telegraph, Inc.*, 306 S.C. 101, 410 S.E.2d 537 (1989).

⁵ The August 22, 2016, Letter is the only communication Kennedy alleges constitutes a contract.

However, “[w]ith respect to an issue on which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by ‘showing’ – that is, pointing out to the [trial] court – that there is absence of evidence to support the non-moving party’s case.” *Id.* at 115, 410 S.E.2d at 544 (quoting *Celotex Corporation v. Catrett*, 477 U.S. 317, 325 (1986)). In that case, the “moving party need not ‘support its motion with affidavits or other similar materials *negating* the opponent’s claim.” *Id.* (quoting *Celotex* at 323) (emphasis in original)). “Once the moving party has carried its initial burden, the opposing party must . . . ‘do more than simply show that there is some metaphysical doubt as to the material facts,’” and “‘must come forward with ‘specific facts showing there is a genuine issue for trial.’” *Id.* (quoting *Matshusita Electrical Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)).

CONCLUSIONS OF LAW

For the purposes of the Motion only, Defendants did not contest Kennedy’s assertion the August 22, 2016, Letter was a contract.⁶ Rather, Defendants contend even if the August 22, 2016, Letter was a contract for employment, there is no fact Kennedy can present to a jury of a breach. Further, Defendants contend the laws of the State of South Carolina, including TERI, and HGTC’s policies barred Kennedy’s continued employment as a matter of law without making the nursing instructor position available for other applicants. Defendants argue there is no evidence Kennedy was promised employment with HGTC after she resigned on December 31, 2016. Finally, allowing Kennedy to amend the Complaint to add a claim for promissory estoppel would be futile and prejudicial. The Court agrees.

⁶ Nonetheless, the August 22, 2016, Letter informed Kennedy she, like every other qualifying HGTC employee, will receive a 3.25% pay increase. As the issue was not raised by Defendants, this Court makes no finding as to whether the August 22, 2016, Letter is a contract.

A. **DEFENDANTS DID NOT BREACH AN EMPLOYMENT CONTRACT WITH KENNEDY**

1. **The August 22, 2016, Letter is Subject to the Laws of the State of South Carolina.**

Even assuming the August 22, 2016, Letter was a contract, it was subject to the laws of the State of South Carolina. The mandates of the TERI statute were part of the August 22, 2016, Letter to Kennedy both as a matter of law and by express reference to “applicable laws.”⁷ Further, the State Board for Technical and Comprehensive Education policies and the policies of HGTC were also part of the August 22, 2016, Letter to Kennedy by express reference to “the policies and procedures” of HGTC and the State Board for Technical and Comprehensive Education. Additionally, the “applicable laws, rules and regulations” of the State Budget and Control Board are expressly referenced and part of Dr. Fore’s August 22, 2016, Letter. Dr. Fore’s letter is unambiguous in respect to its inclusion of State Board for Technical and Comprehensive Education and HGTC polices, as well as the inclusion of the laws, rules and regulations of the State Budget and Control Board.

All these laws, rules, regulations and policies referenced by Dr. Fore are part of the August 22, 2016, Letter and, therefore, included and incorporated into Kennedy’s alleged employment contract. Additionally, as a matter of law and express reference, TERI is unambiguously part of the August 22, 2016, Letter. Notably, TERI required, as a matter of statutory law, Kennedy resign her employment “no later than the day before the fifth annual anniversary of the date the member commenced participation in the program.” S.C. Code Ann. § 9-1-2210(H). As to Kennedy, TERI

⁷ See *Inabinet v. Royal Exchange Assur. of London*, 165 S.C. 33, 36, 162 S.E. 599, 600 (1992) (“Every contract entered into in this State embodies in its terms all applicable laws of the State just as completely as if the contract expressly so stipulated.”).

required she resign her employment with HGTC no later than December 31, 2016. Defendants, in accepting Kennedy's resignation, complied with TERI and, consequently, complied with Dr. Fore's August 22, 2016, Letter to Kennedy (i.e. the alleged contract).⁸

2. There is No Evidence Defendants' Actions Breached Any Agreement Kennedy Had with Defendants.

Defendants' actions with respect to Kennedy's resignation effective December 31, 2016, and the decision to choose another applicant to fill the open position created by Kennedy's resignation, complied with TERI, the State Board for Technical and Comprehensive Education policies and HGTC policies. There is no evidence to show Defendants breached an agreement to employ Kennedy. In fact, the evidence in the record, including Kennedy's own deposition testimony, shows Kennedy resigned from her employment with HGTC on December 31, 2016. Consequently, Defendants' were required to advertise the nursing instructor position and their decision to select another applicant did not breach any employment contract with Kennedy.

Although Kennedy testified she *intended* to continue her employment with HGTC into 2017, there is no evidence Defendants *offered*⁹ Kennedy employment after her resignation on December 31, 2016. Defendants allowed Kennedy to apply and compete for available positions including the nursing instructor position.¹⁰ Consequently, Defendants complied with the August 22, 2016, Letter, including its stated incorporation of "applicable laws" and the "policies and procedures" of the State Board for Technical and Comprehensive Education and HGTC.

⁸ There is no evidence Defendants terminated Kennedy's employment. To the contrary, the only evidence in the record shows Kennedy resigned her employment by way of her "retirement" under the TERI program on December 31, 2016.

⁹ Further, there is no evidence Defendants *promised* Kennedy employment with HGTC as it relates to a promissory estoppel claim.

¹⁰ Kennedy testified she did not apply for any other positions with HGTC or the South Carolina Technical College System.

3. There is No Evidence Kennedy Was Promised Employment After Her December 31, 2016, Resignation.

Even if the August 22, 2016, Letter was a contract, there is no evidence Kennedy was promised employment subsequent to her December 31, 2016, resignation. Kennedy testified she received and understood the January 5, 2016, email from the Assistant Director of Human Resources when Kennedy was provided HGTC's TERI procedure which states, "[t]he System Office/College [HGTC] is not required to re-hire an employee whose TERI program period has ended." (emphasis in original.) Further, during her deposition, Kennedy testified she understood she would need to apply for employment with HGTC after she completed the TERI program.

Kennedy also testified she received the January 20, 2016, email from Dr. Bailey informing Kennedy her position would be advertised prior to her December 31, 2016, resignation and filled after she completed the TERI program on December 31, 2016. Moreover, Kennedy testified she received the January 20, 2016, Letter from President Wilson informing her she would need to apply for "the positions that we have available" after her December 31, 2016, resignation. Finally, Kennedy testified no one promised her she would be selected for the nursing instructor position she applied for in September 2016.¹¹

Therefore, even if the August 22, 2016, Letter was an employment contract, there is no evidence HGTC breached its agreement with Kennedy. Kennedy was required to resign her employment with HGTC by statute. The August 22, 2016, Letter clearly states the provisions of Kennedy's employment are subject to "the terms and conditions of [the August 22, 2016, Letter]

¹¹ Kennedy clearly understood the hiring process described in her correspondence with Defendants because Kennedy testified she applied for the nursing instructor position around September 2016 and interviewed for the position around October 2016.

as set forth in applicable laws, rules and regulations of the Budget and control board, statewide policies and procedures of the State Board for Technical and Comprehensive Education and the policies and procedures of the College [HGTC]." Further, HGTC was required to post the nursing instructor position and consider other applicants for the position. Finally, there is no evidence HGTC promised Kennedy a position after her December 31, 2016, resignation. These facts, viewed in a light most favorable to Kennedy, do not create a triable issue of fact to establish a cause of action for breach of contract.¹²

B. MOTION TO AMEND

1. Kennedy's Motion to Amend is Futile.

"Although promissory estoppel is a flexible doctrine that aims to achieve equitable results, it, like all creatures of equity, has limitations." *Barnes v. Johnson*, 402 S.C. 458, 469, 742 S.E.2d 6, 11 (Ct.App.2013). "Specifically, the doctrine's elements represent a balancing between affording a remedy where contract law cannot, and ensuring the doctrine's application is not, itself, an inequity against the party estopped." *Id.* "To this end, **and particularly because promissory estoppel applies without a contract, the promise to be enforced must be unambiguous** with clearly articulated, definite terms, while the sustained injury must result from an inconsistent disposition [act] by the promisor." *Id.* at 469-70, 742 S.E.2d at 11. (emphasis added.) "Thus, promissory estoppel has broad applicability to prevent injustice, but where a promise is unclear or the alleged harms are unconnected to the inconsistent disposition [inconsistent act], the doctrine does not risk imposing its own inequity against the party sought to be estopped." *Id.*

¹² The Court's grant of summary judgment also supports the denial of Kennedy's Motion to Amend her Complaint to add a cause of action for promissory estoppel.

"The elements of promissory estoppel are (1) a promise unambiguous in its terms is present; (2) the party to whom the promise is made reasonably relies on it; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to who the promise is made must sustain injury in reliance on the promise." 7 S.C. Jur. Estoppel and Waiver § 14.1, citing Woods v. State, 314 S.C. 501, 431 S.E.2d 260 (Ct.App.1993). See also Bishop v. City of Columbia, 401 S.C. 661, 664, 738 S.E.2d 255, 261 (Ct.App.2013) (listing elements necessary to prove promissory estoppel); Richardson at 379, 769 S.E.2d 237, 241 (2015) (listing elements necessary to prove promissory estoppel).

Here, the Court finds there is no evidence HGTC made an unambiguous promise to "re-hire" Kennedy subsequent to her December 31, 2016, retirement. Further, even if Defendants made an unambiguous promise to Kennedy, there is no evidence Kennedy relied on the alleged promise or Defendants failed to deliver on the promise.¹³ Stated differently, and in light of a potential claim for promissory estoppel, it would be futile to allow Kennedy to amend her Complaint to add a claim for promissory estoppel when the Court has found there is no evidence of a broken or unfulfilled promise. Kennedy, in her Memorandum in Opposition to Defendants' Motion for Summary Judgment, makes a two-sentence argument in support of her motion to amend:

"As is indicated in the Section 1 deposition excerpts, it is clear that Ms. Kennedy relied upon the Promissory averments of the Defendants with respect to its *contractual* guarantees to Plaintiff. To the extent that the Defendants are attempting to avoid Plaintiff's contract claims, it is apparent that the evidence in this case supports an additional claim of Promissory Estoppel based upon Defendants' own documented *contract* provided to Plaintiff." (emphasis added.)

¹³ For purposes of their Summary Judgment Motion, Defendants do not contest the existence of a contract. Therefore, even if there was evidence Kennedy relied on a promise she would be employed beyond 2016, there is no evidence the promise was broken because Kennedy resigned her position under TERI.

Here, Kennedy relies on the August 22, 2016, Letter as the basis of her promissory estoppel claim. Kennedy provides no evidence beyond the August 22, 2016, Letter to support her claim Defendants should be required to employ Kennedy beyond her December 31, 2016, retirement.

As discussed above, Kennedy acknowledged she was informed by at least *three* people- the President of HGTC, the Assistant Vice President for Academic Affairs at HGTC, and the Assistant Director of Human Resources at HGTC- that Kennedy would have to apply for and compete with other applicants for any available positions after her participation in the TERI program ended. Further, Kennedy testified no one at HGTC promised her she would be selected for the nursing position she applied for in September 2016. There is no evidence HGTC made an unambiguous promise Kennedy would be hired for a position at HGTC after she retired from her employment with HGTC on December 31, 2016, and no evidence relied on any promise.¹⁴

This Court finds no evidence to create a triable issue of fact to establish a cause of for promissory estoppel. Therefore, allowing Kennedy to amend her Complaint to add a cause of action for promissory estoppel would futile. *See McCarthy v. Cliffs Communities, LLC*, No. 2015-UP-436, 2015 WL 4945392, at *1 (S.C. Ct. App. Aug. 19, 2015) (citing *Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct.App.2010) *rev'd on other grounds*, 401 S.C. 1, 736 S.E.2d 242 (2012)) (“Although leave to amend should generally be ‘freely given,’ this court has held that it may be denied where the proposed amendment would be futile.”).

2. Kennedy’s Motion to Amend is Not Timely.

Kennedy filed her Summons and Complaint alleging a cause of action for breach of contract and breach of contract with fraudulent intent on March 15, 2018. Defendants filed a

¹⁴ There is no evidence Kennedy rejected an offer of employment, providing the same or better compensation and benefits, elsewhere in reliance of her belief the August 22, 2016, Letter was a promise HGTC would employ her for the 2017 school year.

Motion to Dismiss on April 20, 2018, seeking to dismiss the claim for breach of contract with fraudulent intent. On May 21, 2018, Defendants filed their Memorandum in Support of Plaintiff's Motion to Dismiss. Thereafter, on May 31, 2019, the Court dismissed Kennedy's claim for breach of contract with fraudulent intent.¹⁵

On June 12, 2018, Defendants filed their Answer. On February 21, 2019, Defendants took Kennedy's deposition.¹⁶ Subsequently, on February 25, 2019, Defendants filed their Motion for Summary Judgment. On May 6, 2019, Defendants filed their Memorandum in Support of Summary Judgment. On May 9, 2019, Kennedy filed her *first* Memorandum in Opposition to Defendants' Motion for Summary Judgment. Kennedy's first memorandum did not seek to amend her Complaint.

Subsequently, on June 25, 2019, the Parties were notified the hearing on Defendants' Motion for Summary Judgment was set for July 24, 2019.¹⁷ Thereafter, on June 21, 2016, Kennedy submitted a second Memorandum in Opposition to Defendant's Motion for Summary Judgment, this time adding a request to amend under Rule 15, SCRCP. In short, Kennedy raised her motion to amend more than *fifteen months* after she filed her Complaint. Further, Kennedy's motion to amend was first raised the Friday before the scheduled hearing on Defendant's Motion for Summary Judgment.

Kennedy presented no significant factual developments that warranted the untimely amendment. Further, even if the amendment was granted, Defendants would still be entitled to summary judgment on the promissory estoppel claim. *See, Health Promotion Specialists, LLC v.*

¹⁵ Kennedy agreed to voluntarily dismiss this claim.

¹⁶ No other depositions were taken in this case.

¹⁷ The hearing on Defendants' Motion of Summary Judgment was moved from June 24, 2018, to July 24, 2019, due to a potential conflict involving the judge initially assigned to hear the Motion.

S.C. Bd. of Dentistry, 403 S.C. 623, 632, 743 S.E.2d 808, 813 (2013) (finding the circuit court properly denied party's motion to add a cause of action to its complaint because amendment did not occur after a seven year delay and the undertaking of extensive discovery, particularly when there were no significant factual developments that warranted the untimely amendment); *Collins Entm't, Inc. v. White*, 363 S.C. 546, 562, 611 S.E.2d 262, 270 (Ct.App.2005) (“[t]he prejudice that Rule 15 envisions is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it”).

3. Allowing Kennedy to Amend Would be Prejudicial to Defendants.

Kennedy's seeks to add an additional claim for promissory estoppel. Such an amendment at this stage would be prejudicial to Defendants. *See, Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct.App.1994) (“Prejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended action.”); *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 510 (4th Cir.1986) (finding prejudice can result when a proposed amendment is offered shortly before or during trial and raises a new legal theory that would require gathering and analysis of facts not already considered by opposition).

“A contract and promissory estoppel are two separate and distinct legal theories. They ‘are two different creatures of the law; they are not legally synonymous; the birth of one does not spawn the other.’” *Satcher v. Satcher*, 351 S.C. 477, 484, 570 S.E.2d 535, 538 (Ct.App.2002) (quoting *Duke Power Co. v. S.C. Pub. Serv. Comm'n*, 284 S.C. 81, 100, 326 S.E.2d 395, 406 (1985)). “Unlike a contract which requires a meeting of the minds and consideration, promissory estoppel looks at a promise, its subsequent effect on the promisee, and in certain cases bars the promisor

from making an inconsistent disposition of the property [or inconsistent act]." *Id.* at 484, 570 S.E.2d at 538-39.

Here, Defendants did not have the opportunity to gather evidence to defend a claim for promissory estoppel. Specifically, Defendants had no opportunity to engage in discovery related to reliance damages, if any, Kennedy may claim. Further, Kennedy did not present the Court with any evidence of reliance damages. Therefore, Kennedy's Motion to Amend is Denied.

CONCLUSION

For the reasons discussed, Defendants' Motion for Summary Judgment is GRANTED and Plaintiff's Motion to Amend is DENIED.

AND IT IS SO ORDERED!

Benjamin H. Culbertson
Circuit Court Judge

August 5, 2019

EXHIBIT 6

Letter of Receipt of Notice of Appeal – October 21, 2019

GIST LAW FIRM, P.A.

4400 North Main Street
Columbia, South Carolina 29203
Telephone (803) 771-8007
Facsimile (803) 771-0063

ATTORNEYS-AT-LAW
Donald Gist
Aaron Wallace

Mailing Address
P.O. Box 30007
Columbia, South Carolina 29230

October 15, 2019

Bob Conley, Esquire
Emmanuel Ferguson, Esquire
Cleveland & Conley, LLC
171 Church St #310
Charleston, SC 29401

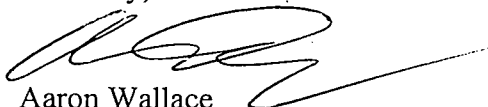
**RE: Coleen Kennedy V. South Carolina Technical College System and Horry-Georgetown
Technical College**

Dear Bob and Emmanuel:

Enclosed please find enclosed our Notice of Appeal in the above case which we are timely serving on you as counsel for the Defendants in the above case along with a certificate of service regarding the same.

Please do not hesitate to contact us if you have any questions or concerns regarding this matter.

Sincerely,



Aaron Wallace
Attorney at Law

c: Ms. Coleen Kennedy

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin Culbertson, Circuit Court Judge

Circuit Court Case No. 2018-CP-26-01696

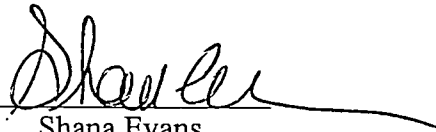
Coleen Kennedy,..... Appellant

v.

South Carolina Technical College System
& Horry-Georgetown Tehnical College
Department,..... Respondent

PROOF OF SERVICE BY APPELLANT.

I certify that I have served the Notice of Appeal on City of Myrtle Beach PD by depositing a copy of it in the United States Mail with postage paid on 10/15/19 to their attorney of record, Bob Conley, Esquire and Emmanuel Ferguson, Esquire of Cleveland & Conley, LLC, 171 Church St #310, Charleston, SC 29401.


Shana Evans
Paralegal

10/15, 2019

EXHIBIT 7

**Letter Noting Deficiencies Within Notice of Appeal –
October 21, 2019**



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 21, 2019

Mr. Donald Gist, Esquire
PO Box 30007
Columbia SC 29230

Re: Kennedy v. SC Technical College System
Appellate Case No. 2019-001749

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and this deficiency must be corrected within ten (10) days of the date of this letter or this appeal will be dismissed:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, the format of the notice of appeal caption should match your proof of service.
- Please file an amended notice of appeal that conforms strictly with Rule 203, SCACR.

Very truly yours,

V. Claire Allen, Deputy
CLERK

cc: Bob J. Conley, Esquire
Emmanuel Joseph Ferguson, Sr., Esquire
Aaron Vernon Wallace, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 21, 2019

Mr. Donald Gist, Esquire
PO Box 30007
Columbia SC 29230

Re: Kennedy v. SC Technical College System
Appellate Case No. 2019-001749

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

Coleen R. Kennedy, Appellant,

v.

South Carolina Technical College System & Horry-Georgetown Technical College, Respondents.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Clair Allen, Deputy
CLERK

cc: Bob J. Conley, Esquire
Emmanuel Joseph Ferguson, Sr., Esquire
Aaron Vernon Wallace, Esquire

EXHIBIT 8

Letter – November 18, 2019



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11529
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1690
FAX: (803) 734-1639
www.sccouris.org

November 18, 2019

Mr. Donald Gist, Esquire
PO Box 30007
Columbia SC 29230

Re: Kennedy v. SC Technical College System
Appellate Case No. 2019-001749

Dear Counsel:

Our records reflect that the time for ordering the transcript has expired. Within ten days of the date of this letter, you must file a copy of the letter showing that you have timely ordered the transcript from the court reporter. If you have not timely ordered the transcript, you must serve and file a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the SCACR, along with a copy of your letter addressed to the court reporter.

Be sure to copy the Court, the Office of Court Administration and opposing counsel with all correspondence concerning the transcript. The address for Court Administration is as follows:

South Carolina Office of Court Administration
1220 Senate Street, Suite 200
Columbia, SC 29201

Please advise the Court of the status of the transcript within ten (10) days of the date of this letter, or your appeal will be dismissed.

Very truly yours,

V. Clair Allen, Deputy

CLERK

cc: Bob J. Conley, Esquire
Emmanuel Joseph Ferguson, Sr., Esquire
Aaron Vernon Wallace, Esquire

EXHIBIT 9

Order – November 19, 2019

The South Carolina Court of Appeals

Coleen R. Kennedy, Appellant,

v.

South Carolina Technical College System & Horry-
Georgetown Technical College, Respondents.

Appellate Case No. 2019-001749

The Honorable Benjamin H. Culbertson
Horry County
Trial Court Case No. 2018CP2601696

ORDER

Appellant has failed to amend the notice of appeal and correct the deficiencies as requested in the Court's correspondence dated October 21, 2019 and as required by Rule 267 and 203 of the South Carolina Appellate Court Rules, SCACR. Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:
Bob J. Conley, Esquire
Emmanuel Joseph Ferguson, Sr., Esquire
Donald Gist, Esquire
Aaron Vernon Wallace, Esquire

FILED

November 19, 2019

EXHIBIT 10

Email to Dahl – November 21, 2019

Emmanuel Ferguson

From: Work <aaronwallace.gistlawfirm@gmail.com>
Sent: Thursday, November 21, 2019 11:13 AM
To: Natalie Dahl
Cc: transcripts@sccourts.org; Emmanuel Ferguson; Cynthia Gist
Subject: Kennedy Transcript Request
Attachments: Kennedy Transcript Request.pdf

Dear Ms. Dahl:

Please see below.

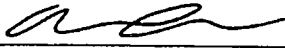
Sincerely,

Aaron Wallace
Attorney at Law

Transcript Request Form

Pursuant to Rule 207 and 607 of the South Carolina Appellate Court Rules, the transcribed paper copy is the official record of court proceedings. You may request a transcript by completing this form and emailing it to the Court Reporter and to South Carolina Court Administration at transcripts@sccourts.org. Click [here](#) for instructions on how to find the court reporter's email and mailing addresses. Once the court reporter receives your request, it will be processed pursuant to Rule 207 and 607 of the SCACR. Rule 607(h) governs the fees for transcripts, which are not provided for free or at reduced rates to any party. Please send by mail a money order or certified bank check to the court reporter in order to obtain the transcript. Some court reporters may accept personal checks. Please check with the court reporter to see if this option is available. Once your request is received, you will receive a copy of this form with the bottom portion completed. Please promptly submit your payment in order for the transcript to be provided. If you need to cancel the transcript request for any reason, you are responsible for paying for the pages of the transcript that have already been completed at the time of the cancellation.

Requestor's Information			
Full Name <u>Donald Gist / Gist Law Firm, PA</u>	Phone Number <u>803 271-8007</u>	Email Address <u>darrenwalker.gistlawfirm@gmail.com</u>	
Mailing Address <u>4400 North Main Street</u>	City <u>Columbia</u>	State <u>SC</u>	Zip Code <u>29203</u>
Transcript Information			
Docket Number <u>2018-CP-26-01696</u>	Case Caption (i.e. State v. John Doe or Smith v. Smith) <u>Colten R. Kennedy vs. South Carolina Technical College System & Horry Georgetown Technical College</u>		
Date(s) of Proceeding <u>July 24, 2019</u>	Circuit <input checked="" type="checkbox"/>	County <u>Horry</u>	
	Family <input type="checkbox"/>		
Presiding Judge <u>Benjamin Culbertson</u>	Expedited Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
Court Reporter(s) <u>Ms. Natalie Dahl (ndahl@sccourts.org)</u> <u>P.O. Box 762, Conway, SC 29526</u>	Opposing Counsel <u>Bob Conley</u> <u>Emmanuel Ferguson</u>		

Requestor's Signature: 
(Typed name will serve as signature)

Date: 11/19/19

Note: If you are ordering a transcript pursuant to Rule 207(a)(1), SCACR, you must contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.

For Court Reporter Use Only			
Full Name _____	Date Received _____	Email Address _____	
Notice of Estimate to Requestor Party Date: _____ Number of Pages: _____ Estimated Amount _____			
Mailing Address for Payment _____	City _____	State _____	Zip Code _____

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Benjamin Culbertson, Circuit Court Judge

Case No. 2019-001749

Colleen Kennedy,

Appellant,

v.

South Carolina Technical College System & Horry-Georgetown Technical College,

Respondents.

PROOF OF SERVICE

I hereby certify that I have served Respondents' Return to Appellant's Motion to Reinstate Appeal on Colleen Kennedy by depositing a copy of it in the United States Mail, postage prepaid, on December 2, 2019, addressed to her attorneys of record, Donald Gist and Aaron Wallace, at their office at P.O. Box 30007, Columbia, SC 29230.



Emmanuel J. Ferguson, Esquire

Caroline Cleveland (SC Bar# 64253)
Bob J. Conley (SC Bar # 12243)
Emmanuel J. Ferguson (SC Bar# 81431)
CLEVELAND & CONLEY, LLC
171 Church Street, Suite 310
Charleston, SC 29401
Telephone: (843)577-9626
Facsimile: (843)577-6672

RECEIVED
DEC 05 2019
SC Court of Appeals

ccleveland@clevelandlaborlaw.com
bconley@clevelandlaborlaw.com
eferguson@clevelandlaborlaw.com

ATTORNEYS FOR RESPONDENTS

December 2, 2019

CLEVELAND & CONLEY, L.L.C.
LABOR AND EMPLOYMENT DEFENSE

ONE SEVENTY ONE CHURCH STREET, SUITE 310
CHARLESTON, SOUTH CAROLINA 29401
WWW.CLEVELANDANDCONLEY.COM

CAROLINE WRENN CLEVELAND †
BOB J. CONLEY
EMMANUEL J. FERGUSON

TELEPHONE: (843) 577-9626
FACSIMILE: (843) 577-6672

December 2, 2019

†CERTIFIED SPECIALIST,
LABOR & EMPLOYMENT LAW

The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: *Colleen Kennedy v. South Carolina Technical College System & Horry
Georgetown Technical College*

Appellate Case No.: 2019-001749

Dear Ms. Kitchings:

Enclosed for filing is the original and six copies of Respondents' Return to Appellant's Motion to Reinstate Appeal. Additionally, enclosed is the original Proof of Service of Respondents' Return. Please feel free to contact me with any questions.

Respectfully,

CLEVELAND & CONLEY, LLC



Emmanuel J. Ferguson

EJF/lmp

Enclosures: as stated

cc: Donald Gist, Esq.
Aaron Wallace, Esq.

RECEIVED
DEC 05 2019
SC Court of Appeals