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
Horry County

Case No. 2018-CP-26-01696
Appellate Case No. 2019-001749

Colleen Kennedy,

Appellant,

v.

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

Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE TRIAL COURT CORRECTLY RULED THAT EVEN IF THE AUGUST 22, 2016, LETTER IS A CONTRACT, THE AGREEMENT IS SUBJECT TO THE LAWS OF THE STATE OF SOUTH CAROLINA AND RESPONDENTS' INTERNAL POLICIES.

2. WHETHER THE TRIAL COURT CORRECTLY RULED APPELLANT PRESENTED NO EVIDENCE OF A CAUSE OF ACTION FOR BREACH OF CONTRACT.

STANDARD OF REVIEW

"In reviewing a motion for summary judgment, the appellate court applies the same standard of review as the trial court under Rule 56(c), SCRCP." Companion Prop. & Cas. Ins. Co. v. Airborne Exp., Inc., 369 S.C. 388, 390–91, 631 S.E.2d 915, 916 (Ct. App. 2006) (citing Cowburn v. Leventis, 366 S.C. 20, 30, 619 S.E.2d 437, 443 (Ct. App. 2005)). "Summary judgment should be affirmed if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." 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). 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)).

STATEMENT OF THE CASE

On March 15, 2018, Appellant Colleen Kennedy ("Appellant") filed her Summons and Complaint in the Horry County Court of Common Pleas. (Summons and Complaint.) Appellant's Complaint alleged causes of action for breach of contract and breach of contract with fraudulent intent. (Complaint.) On May 31, 2018, and with Appellant's consent, the circuit court dismissed Appellant's cause of action for breach of contract with fraudulent intent. (Order Granting Defendants' Motion to Dismiss.) On June 12, 2018, Respondents filed their Answer and, thereafter, the parties engaged in discovery. (Answer.)

On February 25, 2019, Respondents filed their Motion for Summary Judgment (the "Summary Judgment Motion"). (Summary Judgment Motion.) The Summary Judgment Motion was briefed and subsequently heard by the circuit court on July 24, 2019. (Memorandums in Support of and in Opposition to Summary Judgment; Transcript of July 24, 2019, Hearing on Defendants' Motion for Summary Judgment.)

On August 1, 2019, Appellant filed a Motion to Reconsider. (Motion to Reconsider.) On August 5, 2019, the circuit court entered its Order granting Respondents' Summary Judgment Motion (the "Order") (Summary Judgment Order.) Thereafter, on August 15, 2019, Appellant filed her Memorandum in Support of Motion to Reconsider. (August 15, 2019, Memorandum.) Subsequently, on September 3, 2019, Respondents filed their Memorandum in Opposition to Appellant's Motion to Reconsider. (September 3, 2019, Memorandum.)

On September 25, 2019, the circuit court entered an Order denying Appellant's Motion to Reconsider. (September 25, 2019, Order.) Subsequent to the circuit court issuing the Order

denying Appellant's Motion to Reconsider, Appellant filed her Notice of Appeal on October 15, 2019. (Notice of Appeal.)

FACTS

Horry Georgetown Technical College ("HGTC") previously employed Appellant as a nursing instructor from 2007 until December 31, 2016. (Appellant Dep. P. 11:22-24.) Appellant was employed by HGTC[1] pursuant to the Teacher and Employee Retention Incentive Program ("TERI"), codified at S.C. Code Ann. § 9-1-2210.[2] Pursuant to the TERI program, 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. S.C. Code Ann. § 9-1-2210.[3]

Further, pursuant to the TERI program, a participant in the TERI program was ***required*** to resign their employment prior to their fifth anniversary in the TERI program. S.C. Code Ann. § 9-1-2210. A person ***entering*** the TERI program was not required to resign. Specifically, as to Appellant, the day before the fifth anniversary of Appellant's participation in the TERI program was December 31, 2016. (January 18, 2016, Letter to President Wilson.)

Nearly one year prior to the date Appellant was required to resign under the TERI program, Appellant sent an email to Tara Lahnen ("Lahnen"), the Assistant Director of Human Resources at HGTC, on January 5, 2016. (January 5, 2016, Email from Lahnen to Appellant.) In her email, Appellant informed Lahnen of her desire to continue employment beyond the expiration of

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[1] The South Carolina Technical College System (the "SCTCS") is a separate entity and does not employ the faculty or staff of HGTC.

[2] S.C. Code Ann. § 9-1-2210, known as "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."

Appellant's participation in the TERI program. (January 5, 2016, Email from Lahnen to Appellant.) The same day, Lahnen responded to Appellant's email and included the following excerpt of HGTC's re-employment procedure under the TERI program:

> **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.) (January 18, 2016, Letter from Appellant to President Wilson.)

Thereafter, on January 18, 2016, Appellant sent a letter to H. Neyle Wilson ("President Wilson"), the President of HGTC. (January 18, 2016, Letter to President Wilson.) In her letter, Appellant again expressed her desire to "return full time in January 2017," beyond her participation in the TERI program ending in December 2016. (January 18, 2016, Letter to President Wilson.)

Subsequently, on January 20, 2016, President Wilson responded to Appellant by way of a letter and informed Appellant her participation in the TERI program will require her resignation on or before December 31, 2016. (January 20, 2016, Letter from President Wilson to Appellant.) Additionally, and in particular, Wilson informed Appellant: "[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." (January 20, 2016, Letter from President Wilson to Appellant.)

Further, Dr. Christy Bailey ("Dr. Bailey[4]"), the Assistant Vice President for Academic Affairs for Nursing and Associated Healthcare Science, also received Appellant's January 18, 2016, letter. (January 18, 2016, Letter to President Wilson.) On January 20, 2016, Dr. Bailey

[4] In January 2016, Dr. Bailey's last name was "Cimineri."

emailed Appellant and informed her of HGTC's process related to employees leaving the TERI program (January 20, 2016, Email from Dr. Bailey to Appellant.) Dr. Bailey's email to Appellant, 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.**" (emphasis added.) (January 20, 2016, Email from Dr. Bailey to Appellant.)

On August 25, 2016, Appellant acknowledged receipt of an August 22, 2016, letter from Dr. Marilyn Fore ("Dr. Fore"), Senior Vice President for HGTC, regarding Appellant's work as a faculty member (the "August 22, 2016, Letter"). (August 22, 2016, Letter to Appellant.) Dr. Fore's letter informed Appellant that Appellant, and all other unclassified faculty members employed prior to June 30, 2016, would receive a 3.25% increase in their salaries effective August 22, 2016. (August 22, 2016, Letter to Appellant.) Dr. Fore's letter identifies Appellant's salary for the 2016-2017 academic 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**." (emphasis added.) (August 22, 2016, Letter to Appellant.)

Consistent with the TERI program, the policies of the State Board for Technical and Comprehensive Education, and the policies of HGTC, Appellant applied for and competed with other applicants for the advertised position in September 2016 as a nursing instructor with HGTC for 2017. (Appellant Dep. P. 29:15-23.) In October 2016, Appellant was informed she was not

selected for the nursing instructor position. (Appellant Dep. P 30:3-7.) Appellant did not apply for any other open positions and her employment with HGTC remained scheduled to end on December 31, 2016. (Appellant Dep. P. 40:8-19.)

On October 25, 2016, while Appellant was still working as a nursing instructor, she received a letter from Lahnen. (October 25, 2016, Letter from Lahnen to Appellant.) The October 25, 2016, letter confirmed Appellant's "last day of employment will be December 31, 2016, due to retirement (ending TERI)." (October 25, 2016, Letter from Lahnen to Appellant.) Further, on October 25, 2016, Appellant signed a "Termination Checklist" and identified her employment termination date as December 31, 2016. (October 25, 2016, Termination Checklist.)

The "Termination Checklist" identifies "Retirement TERI end" and "TERI ending" as the reasons for Appellant's separation from employment with HGTC. (October 25, 2016, Termination Checklist.) Appellant read the "Termination Checklist," including the reasons for her separation of employment before she signed it. (Appellant Dep. P. 30:3-7.)

ARGUMENT

The circuit court properly ruled Appellant did not present any evidence to establish a cause of action for breach of contract. In particular, the circuit court concluded the August 22, 2016, Letter is the only communication Appellant alleges created a contract between her and Respondents and that it did not create an employment contract. (Appellant Dep. P. 33:19-34:8.)

Appellant asserts the August 22, 2016, Letter contractually bound Respondents to continue her employment into the 2017 academic year, including the 2017 summer term, despite the statutory mandates of the TERI program, the requirements of the South Carolina Budget and Control Board, and Respondents' policies. However, even if the August 22, 2016, Letter was a

contract, the TERI program required Appellant resign her employment and, correspondingly, HGTC was required to open the nursing instructor position to all applicants.

Appellant presented no evidence to the circuit court to show HGTC breached any agreement she alleges she had with Respondents. Moreover, Appellant presented no evidence to the circuit court that Respondents failed to employ Appellant in 2016 or agreed to employ Appellant beyond December 31, 2016.

I. The Trial Court Correctly Ruled the August 22, 2016, Letter is Subject to the Laws of the State of South Carolina and Respondents' Internal Policies.

"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." Inabinet v. Royal Exch. Assur. of London, 165 S.C. 33, 36, 162 S.E. 599, 600 (1932). "Common sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction must prevail." Parker v. Byrd, 309 S.C. 189, 193, 420 S.E.2d 850, 853 (1992).

The August 22, 2016, Letter is clearly a memorandum drafted to inform certain HGTC employees of a 3.25% salary increase. However, even assuming the August 22, 2016, Letter was a contract, the circuit court properly concluded the provisions of the TERI program statute became part of the alleged contract "as if the contract expressly so stipulated."

In other words, the requirement Appellant resign from her employment "the day before the fifth annual anniversary of the date the [Appellant] commenced participation in the [TERI] program" became part of the contract by operation of law. Consequently, Appellant was legally

required to resign from her employment pursuant to the TERI program statute. S.C. Code Ann. § 9-1-2210. (South Carolina Budget and Control Board Post-TERI and Post-Retirement policy, P. 2, Section G.)

Further, the August 22, 2016, Letter specifically states its content is subject to "the 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." (August 22, 2106, Letter.) The policy of the South Carolina Budget and Control Board required the nursing instructor position to be "posted in compliance with the S.C. Code of Laws and [...] post-TERI and post-retirement employees, may apply for any advertised vacancy." (South Carolina Budget and Control Board Post-TERI and Post-Retirement policy, P. 2, Section G.)

Appellant was informed by the Assistant Director of Human Resources at HGTC as early as January 2016, and on multiple occasions thereafter, Appellant was required to resign her employment no later than December 31, 2016. Further, Appellant was informed she was required to apply for and compete with all other applicants for the nursing instructor position after her resignation. (January 5, 2016, Email from Lahnen to Appellant; Appellant Dep. P. 29:19-23; HGTC Procedure 3.4.6.1., P. 3, Section VII.)

In her Initial Brief, Appellant suggests Respondents should have retained Appellant as a nursing instructor beyond December 31, 2016, by way of unlawful means. In particular, Appellant suggests the August 22, 2016, Letter was an agreement to employ Appellant as a post-TERI nursing instructor without accepting her resignation. Appellant's contention directly contradicts the TERI program statute and, therefore, suggests Respondents were required to violate South Carolina law. Further, declining to post the nursing instructor position would have been in direct

violation of the mandate of the South Carolina Budget and Control Board's requirement that the nursing instructor position to be "posted in compliance with the S.C. Code of Laws," including the TERI program statute.

Alternatively, Appellant suggests Respondents were required to or should have allowed Appellant to participate in a "sham" interview process where she would be awarded the nursing instructor position without true consideration of other applicants. This suggestion by Appellant would also violate the mandates of the South Carolina Budget and Control Board, as well as the TERI program statute.

Appellant's interpretation of the August 22, 2016, Letter contradicts the clear instructions of HGTC's President, the Senior Vice President, and the Assistant Director of Human Resources, and interprets the August 22, 2016, Letter in a manner that would yield an unlawful result; a result in violation of the TERI program statute, South Carolina Budget and Control Board mandates, and Respondents' policies. *See* Parker v. Byrd, 309 S.C. 189, 193, 420 S.E.2d 850, 853 (1992) (rejecting plaintiff's assertion a contract existed because "[t]he results of [plaintiff's] interpretation [of the language at issue] would yield unfair and perhaps illegal results.").

Further, in her Initial Brief, Appellant relies on Medical University of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d. 747 (2004) to assert the TERI program did not require a participant's resignation. In Arnaud, the plaintiff, ***prior to participating in the TERI program***, entered into an agreement in 1998 to resign his employment with the defendant on June 30, 2002. Subsequently, in 2001, the plaintiff entered the TERI program with the specific intention to remain employed beyond his June 30, 2002, resignation date.

The plaintiff mistakenly believed his participation in the TERI program *required* he remain employed for five years. When the plaintiff refused to resign, the defendant removed the plaintiff from his position on June 30, 2002. Thereafter, the plaintiff alleged a cause of action for breach of contract. The South Carolina Supreme Court affirmed the circuit court's grant of summary judgment, finding the plaintiff was required to resign pursuant to the agreement between the plaintiff and the defendant – the plaintiff's employer. Id. at 749.

In Arnaud, the plaintiff's resignation date was ***negotiated, agreed upon, and placed in a written agreement*** by the parties. Here, Appellant's resignation date ***was not subject to negotiation and was required by the TERI program statute***. The distinction is significant because HGTC could not have legally retained Appellant's employment beyond December 31, 2016, unless she competed for the nursing instructor position like any other applicant and was selected for the position.

However, Arnaud does contain factual similarities to Appellant's suit because the employer in Arnaud frequently reminded the plaintiff of his approaching resignation date. Further, like Appellant, the plaintiff in Arnaud did not present the trial court with any evidence other than the plaintiff's "bare assertion" he could continue working beyond his agreed resignation date.

The South Carolina Supreme Court in Arnaud held the plaintiff did not present evidence of a promise he would remain employed beyond the agreed resignation date. Id. at 620 ("All that was presented to the trial court was [plaintiff's] bare assertion that he had been informed TERI nullified his previous agreement. In fact, the evidence is clear [plaintiff] was informed several times that he was expected to honor the agreement even though he had entered the TERI program.").

Here, like the plaintiff in Arnaud, Appellant did not present the circuit court with any evidence she was promised employment beyond December 31, 2016. Furthermore, like Arnaud, the evidence is clear Appellant was informed she was expected to resign in compliance with the TERI program and could reapply for the nursing instructor position.

II. The Trial Court Correctly Ruled Appellant Did Not Present Any Evidence to Establish a Cause of Action for Breach of Contract.

"To prove a breach of contract, **the burden is on the plaintiff** to establish the contract, its breach, and proximate damages." McCord v. Laurens Cty. Health Care Sys., 429 S.C. 286, 292, 838 S.E.2d 220, 223 (Ct. App. 2020), *reh'g denied* (Feb. 20, 2020) (citing Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)) (emphasis added). The circuit court correctly ruled that even if the August 22, 2016, Letter was a contract, Appellant did not present any evidence of its breach. Further, the circuit court correctly concluded Appellant did not present any evidence of damages that flowed from the alleged breach.

A. Appellant Did Not Present Any Evidence Respondents Breached an Agreement to Employ Plaintiff as a Nursing Instructor.

"In order to prove the existence of a contract, the employee must show 'the following three elements: 1) a specific offer, 2) communication of the offer to the employee, and 3) performance of job duties in reliance on the offer.'" Davis v. Orangeburg-Calhoun Law Enf't Comm'n, 344 S.C. 240, 247, 542 S.E.2d 755, 758 (Ct. App. 2001) (quoting Prescott v. Farmers Tel. Coop., 335 S.C. 330, 516 S.E.2d 923, 926 (1999). "An employment contract containing a notice provision is a contract for a definite term." Stiles v. Am. Gen. Life Ins. Co., 335 S.C. 222, 225, 516 S.E.2d 449, 450 (1999) (citing Shivers v. John H. Harland Co., Inc., 310 S.C. 217, 423 S.E.2d 105 (1992). "An employment contract containing a notice provision does not provide for a specific termination

date, but is continually in force until notice is given." Id. "Once notice is given the employment contract assumes a definite term which is the last day of the notice period." Id. 450-51.

Even assuming the August 22, 2016, Letter was a contract, and it was not a contract, the alleged termination date in the contract was December 31, 2016, pursuant to the notice provided to Appellant by President Wilson, Dr. Bailey, and Lahnen.[5] As early as January 20, 2016, Appellant was provided notice the alleged employment contract was set to end on December 31, 2016. (January 20, 2016, Letter from President Wilson to Appellant.)

Further, Appellant presented no evidence Respondents failed to employ or compensate her prior to December 31, 2016. Moreover, Appellant testified she understood the nursing instructor position she held was "posted" as an open position prior to termination of her employment. (Appellant Dep. P. 29:14-23.) Notably, Appellant continued to work as a nursing instructor until her resignation on December 31, 2016, and Appellant was informed on multiple occasions she needed to apply for the open position.

There is no dispute Appellant was provided notice her employment would end on December 31, 2016. For instance, Appellant testified she interviewed for the nursing instructor position in September 2016 and was informed she was not selected for the position in October 2016. (Appellant Dep. P. 30:3-7.) Further, Appellant continued to work at HGTC for the remainder of 2016 and resigned from her employment with HGTC without incident or contention that her employment was not at its end. Even assuming the August 22, 2016, Letter was a contract, and it

[5] The August 22, 2016, Letter did not provide a definite term because Plaintiff testified she expected her employment to continue into the summer every year, even though the August 22, 2106, Letter does not guarantee employment during the summer months. (Appellant Dep. P. 21:19-22:3.)

was not a contract, there is no evidence HGTC breached its agreement to employ Appellant prior to giving notice her employment would end December 31, 2016.

B. Appellant Did Not Present Any Evidence HGTC Promised Appellant Employment Beyond December 31, 2016.

On October 25, 2016, Appellant received and signed the "Termination Checklist" confirming her employment with HGTC would end on December 31, 2016. (October 25, 2016, Termination Checklist.) Appellant also acknowledged receipt of the October 25, 2016, Letter from Lahnen that stated, in bold lettering, "**The System Office/College** [HGTC] **is not required to re-hire an employee whose TERI program period has ended.**" Moreover, Appellant testified no one at HGTC promised she would be selected for the open 2017 nursing position she applied for in September 2016. (Appellant Dep. P. 36:11-4.) Consequently, Appellant presented no evidence HGTC made an unambiguous promise that Appellant would be hired for a position at HGTC after she resigned from her employment with HGTC on December 31, 2016.

Moreover, Appellant testified she understood her employment was going to end December 31, 2016:

> Q. What did you understand termination --what was being terminated as a result of this document [the October 25, 2016, Termination Checklist]?
>
> A. The TERI contract.
>
> Q. And you were under TERI contract for employment with Horry-Georgetown Technical College as a nursing professor?
>
> A. I was under the TERI program, not a contract. I was under a TERI program for five years.
>
> Q. And that five years was going to end December 31st, 2016?

A. Yes.

[...]

Q. Do you remember receiving this letter [the October 25, 2016, Letter from Lahnen to Appellant]?

A. Yes.

Q. Okay. Did you read it when you received it?

A. Yes.

Q. Okay. Let me ask you: The first sentence says, I understand your last day of employment will be December 31st, 2016 due to retirement, ending TERI. Did you read that sentence?

A. Yes.

Q. All right. Was that sentence accurate?

A. The TERI program would be ending, but I had a contract that I had signed in August of 2016 through May of 2017.

Q. Is it accurate that your last day of employment would be December 31st, 2016?

A. Under the TERI program.

Q. Is that a "yes"?

A. The last day of my employment with TERI would be December the 31st, 2016. (Appellant Dep. P. 38:19-40:13.)

Further, Appellant did not present any evidence HGTC agreed to employ Appellant after December 31, 2016. To the contrary, Appellant acknowledged she was informed by at least three HGTC employees- the President of HGTC, the Assistant Vice President for Academic Affairs at HGTC, and the Assistant Director of Human Resources at HGTC - she would have to apply for and compete with other applicants for any available positions after her participation in the TERI

program ended.[6] (January 18, 2016, Email from President Wilson to Appellant; January 20, 2016, Email from Dr. Bailey to Appellant; January 5, 2016, Email from Lahnen to Appellant.)

Moreover, Appellant testified no one promised her she would be selected for the nursing instructor position she applied for in 2016:

> Q. Okay. I'll ask you this way: What position did you interview for in 2016?
>
> A. Nursing faculty position.
>
> Q. Okay. Did anyone promise you you would be selected for that nursing faculty position?
>
> A. I signed the contract, 2016 through 2017.
>
> Q. Okay. Did anyone promise you that you would be selected for the position that you had interviewed for in 2016?
>
> A. No. (Appellant's Deposition, P. 36:4-14.)

The circuit court correctly concluded Appellant's claim the August 22, 2016, Letter promised employment beyond December 31, 2016, is without merit. Appellant attempts to construe the phrase "2016-2017 academic year," contained in the August 22, 2016, Letter to indicate Respondents promised to employ Appellant beyond December 31, 2016. However, the August 22, 2016, Letter identifies Appellant's salary increase for the 2016-2017 ***academic year***, as opposed to the 2017-2018 ***academic year***.

Although somewhat of a misnomer, it is commonly understood academic years are separated by the summer months. Therefore, August 2016 through December 2016 is part of the

[6] There is no evidence Appellant relied on any alleged promise of employment. Plaintiff testified no one at HGTC promised her employment and there is no evidence Appellant rejected an offer of employment elsewhere in reliance of her belief the August 22, 2016, Letter was a promise HGTC would employ her for the 2017 school year.

2016-2017 academic year, whereas August 2017 through December 2017 is ***not*** part of the 2016-2017 academic year but, instead, is part of the ***2017-2018 academic year***. Because Appellant would be employed between August 2016 and December 2016, her employment would be during the ***2016-2017 academic year***. Appellant's contention the phrase "2016-2017 academic year" contained in the August 22, 2016 Letter was a promise to employ Appellant beyond December 31, 2016, is without merit.

C. Appellant Did Not Present Any Evidence of Damages.

"The burden of proving damages for breach of a contract rests on the plaintiff." Jackson v. Midlands Human Res. Ctr., 296 S.C. 526, 528, 374 S.E.2d 505, 506 (Ct. App. 1988). "Damages recoverable for breach of contract either must flow as a natural consequence of the breach or must have been reasonably within the parties' contemplation at the time of the contract." Manning v. City of Columbia, 297 S.C. 451, 455, 377 S.E.2d 335, 337 (1989). "The measure of damages for breach of contract is the loss actually suffered by the contractee as the result of the breach." S.C. Fin. Corp. of Anderson v. W. Side Fin. Co., 236 S.C. 109, 122, 113 S.E.2d 329, 335 (1960) (citing 15 Am. Jur., Damages, Section 43).

Even if the August 22, 2016, letter was a contract for employment, the circuit court correctly concluded Appellant did not present any evidence of damages. Appellant remained employed with HCTC through December 31, 2016, and Appellant was compensated for her work. Further, Appellant presented no evidence she relied on her alleged agreement with HGTC to refuse other employment opportunities.

Notably, Appellant began working as an adjunct professor at Strayer University in December 2016. (Appellant Dep. P. 7:1-11:24; Exhibit 1 to Appellant Dep.) Additionally,

Appellant also began employment with "Health Reach Van" in February 2017. (Appellant Dep. P. 7:1-11:24; Exhibit 1 to Appellant Dep.) Finally, Appellant continued her employment with Chamberlain College of Nursing after her employment with HGTC ended. (Appellant Dep. P. 7:1-11:24; Exhibit 1 to Appellant Dep.)

Plaintiff's testimony she was affected "financially," without more, is not evidence of damages. (Appellant Dep. P. 64:14-65:1.) Consequently, there is no evidence in the record Appellant suffered any damages as a result on an alleged breached employment contract by Respondents. Therefore, the circuit court correctly concluded Appellant did not establish a cause of action for breach of contract.

CONCLUSION

For the reasons stated, this Court should affirm the circuit court's Order granting Respondents' Motion for Summary Judgment.

Respectfully submitted,

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November 18, 2020

IN THE STATE OF SOUTH CAROLINA
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APPEAL FROM HORRY COUNTY
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Honorable Benjamin Culbertson, Circuit Court Judge

Case No. 2019-001749

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Appellant,

v.

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

Respondents.

PROOF OF SERVICE

I hereby certify that I have served Respondents' Initial Brief on Counsel for Appellant Colleen Kennedy by depositing a copy of it in the United States Mail, postage prepaid, on November 18, 2020, addressed to her attorney of record, Donald Gist, at his office at P.O. Box 30007, Columbia, SC 29230.

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November 18, 2020

The Honorable Jenny Kitchings
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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 of Respondents' Initial Brief and the original of Respondents' Designation of Matter to Be Included in the Record on Appeal. Additionally, enclosed are the original Proofs of Service as to Respondents' Initial Brief and Respondents' Designation of Matter to Be Included in the Record on Appeal. Please feel free to contact me with any questions.

Respectfully,

CLEVELAND & CONLEY, LLC

Bob J. Conley

BJC/lmp
Enclosures: as stated
cc: Donald Gist, Esq.

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