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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2020-CP-10-02726
OLIVIA M. THOMPSON, Ph.D., M.P.H.,	)	
Plaintiff,	)	**ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**
vs	)	
COLLEGE OF CHARLESTON; COLLEGE OF CHARLESTON FOUNDATION, INC.; FRANCES C. WELCH, Ph.D., M.A.; GODFREY A. GIBBISON, Ph.D., M.S.; and CHRISTOPHER R. TOBIN,	)	
Defendants.	)	

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SC Court of Appeals

On April 2, 2021, Plaintiff Olivia M. Thompson, Ph.D., M.P.H. ("Plaintiff" or "Thompson"), filed a Motion for Preliminary Injunction. On July 9, 2021, Thompson filed a Supplemental Motion for Temporary Restraining Order and Preliminary Injunction. These two motions are referred to and addressed herein collectively as the "Second Motions." On November 1, 2021, the Court conducted oral argument on, *inter alia*, Plaintiff's Second Motions. Attorney Randell C. Stoney argued on behalf of Defendants College of Charleston ("CofC"), Frances C. Welch, Ph.D., M.A. ("Dr. Welch") and Godfrey A. Gibbison, Ph.D., M.S. ("Dr. Gibbison"). Attorney Daniel F. Blanchard argued on behalf of Plaintiff Thompson.

Having considered the parties' filings, oral arguments and the governing law, it is hereby ORDERED, ADJUDGED and DECREED that Plaintiff Thompson's Second Motions be, and hereby are, DENIED.

INTRODUCTION

Plaintiff alleges that she was employed by CofC initially as an untenured Assistant Professor and thereafter as a tenured Associate Professor. She alleges that, prior to August 16, 2014, her faculty appointment was in CofC's School of Education, Health, and Human

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Performance ("EHHP"), under the direction and supervision of its Dean, Dr. Welch. She alleges that Dr. Welch engaged in misconduct directed toward her, including efforts to terminate her and reassign grants that she had obtained. Plaintiff alleges that, as a result of Dr. Welch's conduct towards her, she and CofC entered into a Memorandum of Understanding ("MOU") on July 17, 2014, which she has asserted is a contract. She further alleges that, under the MOU, she was moved out of the EHHP and away from Dr. Welch, to CofC's School of Humanities and Social Sciences, reporting to Dr. Kendra Stewart, HSS Department Chair.

Plaintiff claims that she obtained a grant from Boeing Company ("Boeing") to fund a project entitled "Veterans Fellowship Program in Sustainable Food Systems." On or about July 1, 2019, Dr. Welch became CofC's Interim Provost and Executive Vice President for Academic Affairs. Plaintiff avers that Dr. Welch moved her back to the EHHP, contrary to the MOU. She has accused CofC of violating the MOU in various other ways. For example, she asserts that Dr. Welch returned to the EHHP to be her supervisor. Plaintiff further claims that Dr. Welch and Dr. Gibbison engaged in conduct to retaliate against her and undermine her grant from Boeing and the Program.

In her Complaint, Plaintiff alleges the following causes of action: (1) declaratory judgment against CofC; (2) breach of contract/covenant of good faith and fair dealing against CofC; (3) S.C. Payment of Wages Act against CofC and Dr. Welch; (4) intentional interference with contract against all Defednants; (5) intentional interference with prospective business relations against all Defendants; (6) defamation against all Defendants; (7) civil conspiracy against all Defendants; (8) injunctive relief against CofC and Dr. Welch; (9) conversion against Defendants College of Charleston Foundation ("Foundation") and Dr. Christopher R. Tobin ("Dr. Tobin"); and (10) attorneys' fees and costs against CofC under S.C. Code § 15-77-300. In her injunction count, Plaintiff seeks an injunction:

a. restraining and enjoining Defendants CofC and Welch from unilaterally changing Plaintiff's faculty appointment;

b. restraining and enjoining Defendants CofC and Welch from unilaterally transferring or moving Plaintiff back to the CofC's EHHP;

c. restraining and enjoining Defendants CofC and Welch *pendente lite* from unilaterally returning Plaintiff to work under Defendant Welch's supervision;

d. restraining and enjoining Defendants CofC and Welch from unilaterally removing Plaintiff's faculty appointment from Dr. Stewart's report;

e. restraining and enjoining Defendants CofC and Welch from failing to consult with Plaintiff or obtain her agreement with the transfer of her faculty appointment;

f. restraining and enjoining Defendants CofC and Welch from failing to consult with the Dean of affected school or its Department Chair and/or to obtain their review or approval of the transfer of Plaintiff's faculty appointment before it is made;

g. restraining and enjoining Defendants CofC and Welch from breaching or disregarding the terms and provisions of the MOU dated July 17, 2014;

h. requiring Defendants CofC and Welch to immediately return or restore Plaintiff's faculty appointment to HSS;

i. requiring Defendants CofC and Welch to immediately remove Plaintiff from under Defendant Welch's supervision;

j. requiring Defendants CofC and Welch to immediately return or restore Plaintiff's faculty appointment to Dr. Stewart's report.

The day after Plaintiff filed her Summons and Complaint (June 24, 2020), she filed a Motion for a Preliminary Injunction ("First Motion"), seeking relief identical to the injunction requested in the Complaint. (*See* Pl.'s June 25, 2020 Mot. for Prelim. Inj., at 1-2). On August 13, 2020, before the formal joinder of pleadings, the Honorable Daniel D. Hall entered an Order denying Plaintiff's First Motion, "[a]fter careful consideration."

On April 2, 2021, Plaintiff filed a Motion for Preliminary Injunction, which relied on the MOU and made averments substantively similar to the First Motion, seeking an injunction:

a. restraining and enjoining Defendants CofC and Welch *pendente lite* from breaching, contravening, or disregarding the terms and provisions of the written Memorandum of Understanding dated July 17, 2014 (hereinafter "MOU") that was executed and agreed to by Plaintiff and Defendants CofC

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and Welch. A true and correct copy of the MOU is attached hereto as "Exhibit A" and is incorporated herein by reference;

b. restraining and enjoining Defendants CofC and Welch *pendente lite* from unilaterally changing or altering Plaintiff's faculty appointment, physical office location, and administrative location in contravention of the terms and provisions of the MOU. Plaintiff seeks an Order *pendente lite* maintaining and/or restoring her tenure-track faculty line, physical office, and administrative location at the Joseph P. Riley, Jr. Center for Livable Communities (hereinafter "Riley Center") in accordance with the terms and provisions of the MOU;

c. restraining and enjoining Defendants CofC and Welch *pendente lite* from unilaterally transferring or moving Plaintiff to the CofC's School of Education, Health, and Human Performance (hereinafter "EHHP") in contravention of the terms and provisions of the MOU. Plaintiff seeks an Order pendente lite maintaining and/or restoring her faculty appointment to the CofC's School of Humanities and Social Sciences (hereinafter "HSS") in accordance with the terms and provisions of the MOU;

d. restraining and enjoining Defendants CofC and Welch *pendente lite* from unilaterally returning Plaintiff to work under Defendant Welch's supervision and unilaterally removing Plaintiff's faculty appointment from Dr. Kendra Stewart's report in contravention of the terms and provisions of the MOU. Plaintiff seeks an Order *pendente lite* removing Plaintiff from under Defendant Welch's supervision and maintaining and/or restoring her assignment or faculty appointment to the supervision of Dr. Kendra Stewart (who serves or served in the functional role as Plaintiff's department chairperson) in accordance with the terms and provisions of the MOU;

e. restraining and enjoining Defendants CofC and Welch from failing to consult with Plaintiff or obtain her agreement with any change to or transfer of her faculty appointment, physical office location, and administrative location; and

f. restraining and enjoining Defendants CofC and Welch *pendente lite* from otherwise retaliating against and harassing Plaintiff.

(*See* Pl.'s April 2, 2021 Mot. for Prelim. Inj., at 1-2). On July 9, 2021, Thompson filed her Supplemental Motion for Temporary Restraining Order and Preliminary Injunction, seeking an injunction precluding CofC:

a. from breaching, contravening, or disregarding the terms and provisions of that written Memorandum of Understanding dated July 17, 2014 (hereinafter "MOU") that was executed and agreed to by Plaintiff and

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Defendants CofC and Frances C. Welch, Ph.D., M.A. (hereinafter "Dr. Welch") and others;

b. from at any time and in any manner whatsoever denying Plaintiff access to or the use of, or otherwise preventing Plaintiff from having access to or the use of, Plaintiff's Faculty Office located in the CofC's Joseph P. Riley, Jr. Center for Livable Communities ("Riley Center") at 176 Lockwood Boulevard, Charleston, South Carolina, as appropriate for a full-time tenured Associate Professor of Defendant CofC; and in furtherance thereof, ordering Defendant CofC to immediately provide Plaintiff with a fully functional key card to the exterior door on the first floor of the Riley Center for Plaintiff to use for purposes of accessing and using Plaintiff's Faculty Office;

c. from at any time and in any manner whatsoever denying Plaintiff access to and the use of, or otherwise preventing Plaintiff from having access to or the use of, any other facilities of Defendant CofC of whatever kind and wherever located as appropriate for a full-time tenured Associate Professor of Defendant CofC, including without limitation, all classrooms and all other instructional areas available to Instructional Faculty of the CofC for purposes of performing her responsibilities as an employee of the CofC; and in furtherance thereof, ordering Defendant CofC to immediately provide to Plaintiff a fully functional key card or other type of key as necessary for opening the exterior and interior doors of all such facilities for Plaintiff to so access and use; and

d. from at any time and in any manner whatsoever engaging in any retaliation against or harassment or intimidation of Plaintiff for her bringing this civil action against Defendant CofC or otherwise lawfully exercising her legal rights.

(*See* Pl.'s July 9, 2021 Suppl. Mot. for Temp. Restraining Order and Prelim. Inj., at 1-2).

For the following reasons, the Court DENIES Plaintiff's Second Motions and DENIES Plaintiff any interim injunctive relief.

ANALYSIS

A. Plaintiff's Second Motions Are Precluded by Judge Hall's Denial of the First Motion.

The specific relief Plaintiff requested in her First Motion and Second Motions is set forth at length, *supra*. While Plaintiff changes the wording somewhat, she seeks essentially the same relief in her Second Motions that she sought in her First Motion. The primary relief sought in both motions is an injunction precluding CofC from breaching the MOU or changing Plaintiff's location

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or assignment. However, Judge Hall already denied her request for a preliminary injunction "[a]fter careful consideration."

"'There is a long standing rule in this State that one judge of the same court cannot overrule another.'" *Sellers v. Nicholls*, 432 S.C. 101, 114, 851 S.E.2d 54, 60 (Ct. App. 2020) (*quoting Charleston Cty. Dep't of Soc. Servs. v. Father (in the Interest of Two Minors)*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995) ("[A] successor judge may not substitute his own judgment for that of the trial judge.")); *accord Dorchester Cty. Dep't of Soc. Servs. v. Miller*, 324 S.C. 445, 457, 477 S.E.2d 476, 483 (Ct. App. 1996) (same); *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another."). Under this rule, the Court may not second-guess Judge Hall's denial of the First Motion. Although Plaintiff claims that the Court should disregard Judge Hall's order because he did not receive memoranda and did not conduct a hearing, the Court notes that Plaintiff never filed a motion for reconsideration, a motion to alter or amend or any other motion asking Judge Hall to revisit his ruling. As a result, the Court is constrained to respect Judge Hall's prior Order determining that Plaintiff is not entitled to preliminary injunctive relief.

In her Memorandum in Support of her Second Motions, she posits that she is not bound by the denial of her First Motion because a ruling on a temporary injunction cannot have preclusive effect:

> "[A] preliminary injunction proceeding does not fully and finally adjudicate the parties' rights, and the principles of res judicata and collateral estoppel are inapplicable to any findings made by the court during those proceedings." *Pittsburgh Logistics Sys., Inc. v. LaserShip, Inc.*, No. 2:18-CV-1382, 2019 WL 2443035, at *4 (W.D. Pa. June 12, 2019) (*quoting Porter v. Chevron Appalachia, LLC*, 204 A.3d 411, 419 n.2 (Pa. Super. Ct. 2019)); *see also Coinmach Corp. v. Fordham Hill Owners Corp.*, 770 N.Y.S.2d 310, 312 (N.Y. Sup. Ct. 2004) ("It is settled law that the grant or denial of a request for a preliminary injunction, a provisional remedy designed for the narrow purpose of maintaining the status quo, is not an adjudication on the merits and will not be given res judicata effect."); *Gessler v. Madigan*, 322 N.E.2d 127, 129 (Ohio Ct. App. 1974) ("The granting or denial of a preliminary injunction does not amount to an adjudication of the ultimate rights in controversy, is not conclusive on the court on a subsequent hearing, and concludes no rights of the parties."); *Softchoice Corp. v. MacKenzie*, 636 F. Supp.

> 2d 927, 936 (D. Neb. 2009) ("[T]the doctrine of collateral estoppel requires a prior final judgment; the granting or denial of a preliminary injunction is generally not based on a final decision on the merits and is not a final judgment for the purposes of collateral estoppel."); *People of Colo. ex rel. Watrous v. Dist. Ct. of U. S. for Dist. of Colo.*, 207 F.2d 50, 58 (10th Cir. 1953) ("The denial of the preliminary injunction was not an adjudication of the ultimate rights in controversy. It will not be conclusive on the court or the rights of the plaintiffs at a subsequent hearing."). Simply stated, the present motions are not barred by Judge Hall's Form 4 Order.

(*See* Pl.'s Aug. 31, 2021 Mem. Supp. Mots. for Temp. Restraining Order and Prelim Inj., at 20-21). However, these cases are inapposite, in that the Court is not preventing Plaintiff from litigating any substantive factual or legal issues addressed in Judge Hall's order. Instead, the Court is respecting a prior judge's decision that this case does not warrant the extraordinary remedy of preliminary injunctive relief.

Therefore, the Court DENIES Plaintiff's Second Motions because Judge Hall's prior order addresses her request for interim injunctive relief.

B. <u>Plaintiff Has Not Carried Her Burden of Showing Entitlement to Preliminary Injunctive Relief.</u>

"A preliminary injunction should issue only if necessary to preserve the *status quo ante.*" *HookPoint, LLC v. Branch Banking and Trust Co.*, 397 S.C. 507, 511, 725 S.E.2d 681, 683 (2012). The requirements for preliminary injunctive relief are well-settled:

> An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct.App.2002). Accordingly, the applicant must establish three elements to receive this relief: (1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

Compton v. South Carolina Dep't of Corr., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). "A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party" of these requirements. *See Poynter Invs. v. Century Builders of Piedmont*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010). "The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it."

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Compton, 709 S.E.2d at 642. For the reasons that follow, the Court concludes that Plaintiff has not carried her burden of proving the elements required for the issuance of a preliminary injunction.

1. <u>Plaintiff Has Not Shown That She Will Suffer Irreparable Harm Without the Injunction.</u>

Whether "a wrong is irreparable, in the sense that equity may intervene, and whether there is an adequate remedy at law, are questions that are not decided by narrow and artificial rules." *See Kirk v. Clark*, 191 S.C. 205, 211, 4 S.E.2d 13, 16 (1939). For the reasons that follow, the Court determines that Plaintiff has not carried her burden of showing that she will suffer irreparable harm without the immediate issuance of a preliminary injunction.

Plaintiff claims that she will suffer irreparable harm in that she will be subjected to retaliation and deprivation of her rights under the MOU. She also claims that she will be deprived of the opportunity to apply for the vacated HEHP chairperson position. She additionally alleges that the move of her office will harm her ability to perform her work, will damage her reputation, and will cause emotional distress. However, Plaintiff has not cited to any authority supporting that any of those alleged harms are truly "irreparable." The Court concludes that Plaintiff has not carried her heavy burden of showing that these injuries are so severe that they warrant the rare relief of a preliminary injunction. She has offered no evidence that she is in danger of sustaining any harm from which she cannot recover if the Court denies the Second Motions.

Although this case has been pending for over 15 months without injunctive relief, Plaintiff has not presented any evidence that she has been irreparably harmed during that time. To the contrary, she is performing well in her current employment with CofC. For example, for the fall semester of 2021, Plaintiff is teaching three courses in her discipline which are placed with similar disciplines in the Department of Health and Human Performance within the EHHP. Her course load is typical for a faculty member in her Department and area of study. The location of her assigned office with the other members of her department is reasonable and consistent with this academic setting. Further, Court understands that Plaintiff has been teaching and holding office hours virtually. As a result, she has been in complete control of her interaction with other

Department members, the department Chair and Dr. Welch. These facts undermine Plaintiff's claim that she will suffer irreparable harm as a result of the denial of preliminary injunctive relief.

The South Carolina cases that Plaintiff relies upon support the Court's conclusion that Plaintiff has not shown irreparable harm here. For example, in *Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 626 S.E.2d 38 (Ct. App. 2005), an anesthesiologist sought a preliminary injunction preventing a hospital from terminating her privileges after the expiration of an anesthesia services contract with the hospital. The Court of Appeals affirmed the grant of injunctive relief, holding that irreparable harm had been shown:

> Levine has built a patient referral base through her work at the Hospital. This referral base would erode and potentially disappear if Levine lost her privileges at the Hospital while the merits of her underlying action against the Hospital and Foothills are adjudicated. Levine would also lose competency in anesthesiology if she were unable to ply her trade as the lawsuit progressed. Such inactivity could lead to the loss of her professional practice and career, which can be an irreparable harm.

See id., 367 S.C. at 465, 626 S.E.2d at 42. In this case, there is no evidence that CofC has done anything to prevent Plaintiff from performing her work. To the contrary, Plaintiff is still employed at CofC and has made no showing that her career is in immediate jeopardy from CofC's conduct.

Plaintiff also cites *Rental Uniform Servs. v. Dudley*, 278 S.C. 674, 301 S.E.2d 142 (1983), for the proposition that " a preliminary injunction is appropriate to restrain a breach of obligations imposed by an employment contract." (*See* Pl.'s Aug. 31, 2021 Mem. Supp. Mots. for Temp. Restraining Order and Prelim. Injs., at 22-23). In that case, an employer appealed the denial of a motion for injunctive relief under a covenant not to compete in an employment contract. Importantly, the Court in *Dudley* did not address irreparable harm, as the injunction sought there was permanent, not preliminary. The issue in *Dudley* was, rather, whether the trial court erred in finding that the covenant not to compete was unenforceable. *Dudley* does not stand for the proposition cited and does not support Plaintiff's claim of irreparable harm.

Therefore, for the foregoing reasons, the Court DENIES Plaintiff's Second Motions.

2. Plaintiff Has Not Shown That She Is Likely to Succeed on the Merits.

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"In evaluating whether a plaintiff is entitled to a preliminary injunction, the court must examine the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief." *Compton v. South Carolina Dep't of Corr.*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011). In considering the element, the Courts will examine the merits only to the extent necessary to justify an order halting a party's injury and to afford orderly and deliberative due process." *See Transcontinental Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 167 S.E.2d 313 (1969). For the reasons that follow, the Court concludes that Plaintiff has not shown a likelihood of success on the merits.

Plaintiff first contends that she is likely to succeed on her claim that she was denied the HEHP chairperson position based on Dr. Welch's arbitrary decision to deem her application untimely, when she was not given notice of the deadline. However, the record shows that Plaintiff chose not to attend a duly-called meeting on January 26, 2021 where the announcement was made that the current Department Chair would not seek reappointment. The evidence shows that, at that meeting, Dr. Welch asked anyone interested in being considered for the chairmanship to submit their application within seven days. Because she was not at this meeting, Plaintiff did not submit a timely application. As a result of her missing that deadline, Plaintiff filed a grievance and was given a hearing before the Grievance Committee, which rendered a non-binding advisory assessment. Plaintiff acknowledged during her grievance hearing that she does not know her faculty peer group and has never attended or participated in department meetings. She has presented no evidence to show that she should have obtained this position. She has not shown that she is likely to succeed on the merits of this claim.

Plaintiff also claims that she is likely to succeed on the merits of her claim that CofC moved her office in violation of the MOU. However, Plaintiff has not presented any evidence or cited to any authority that the MOU is binding and that she is likely to show that CofC violated it. To constitute a valid and binding contract, it is essential all parties assent to the same thing in the same sense. *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 894-95 (1989). "South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a

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meeting of the minds between parties with regard to all essential and material terms of agreement". *Id.* "[F]or a contract to be binding, material terms cannot be left for future agreement"; "an agreement which leaves open material terms is unenforceable." *Stevens and Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578-79, 762 S.E.2d 696, 701 (2014) (citation omitted). Plaintiff has not shown that she is likely to succeed on her claim that the MOU is an enforceable contract, as its terms do not evidence an intent to be contractually bound to specific, enforceable obligations.

Therefore, because Plaintiff has not shown a likelihood of success on the merits, the Court DENIES her Second Motions.

3. Plaintiff Has Not Shown That She Does Not Have an Adequate Remedy at Law.

Plaintiff has not shown that she does not have an adequate legal remedy. To the contrary, she has an adequate legal remedy in the form of a jury trial for money damages. Any harm to Plaintiff from CofC's actions can be remedied by an award of legal relief to compensate her for her injuries. Therefore, for this additional reason, the Court DENIES Plaintiff's Second Motions.

CONCLUSION

For the foregoing reasons, the Court DENIES Plaintiff's April 2, 2021 Motion for Preliminary Injunction and July 9, 2021 Supplemental Motion for Temporary Restraining Order and Preliminary Injunction.

IT IS SO ORDERED!

BY THE COURT

Roger M. Young, Sr.
Presiding Judge

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Charleston Common Pleas

Case Caption: Olivia M Thompson VS College Of Charleston , defendant, et al

Case Number: 2020CP1002726

Type: Order/Temporary Injunction

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

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