RECEIVED
Apr 15 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas for the Ninth Judicial Circuit

The Honorable Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2022-000044
Court of Common Pleas No. 2020-CP-10-02726

Olivia M. Thompson, Ph.D., M.P.H. .... Appellant,

v.

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

Of whom College of Charleston and Frances C. Welch, Ph.D.,
M.A. are the .... Respondents

INITIAL BRIEF OF RESPONDENTS

Randell C. Stoney, Jr., Esq. (S.C. #5375)
M. Dawes Cooke, Jr., Esq. (S.C. #1376)
John W. Fletcher, Esq. (S.C. #69550)
Allison M. Burns (S.C. #105265)
BARNWELL WHALEY PATTERSON &
HELMS, LLC
211 King Street, Suite 300 (29401)
PO Drawer H
Charleston, SC 29402
Phone: (843) 577-7700 Fax: (843) 577-7708
Counsel for Respondents College of Charleston and Frances C. Welch, Ph.D., M.A.

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

A. Factual Background 2

1. The Memorandum of Understanding 2

2. The Boeing Grant 4

3. Alleged Breaches of the MOU 5

4. Alleged Events After Commencement of This Lawsuit 7

a. Alleged Relocation to Silcox Building 7

b. Chairperson Position 8

B. Procedural History 9

1. Dr. Thompson's Complaint and First Request for a Preliminary Injunction 12

2. Dr. Thompson's Second Motion for Preliminary Injunction and Supplement to Second Motion 16

3. Judge Young's Denial of the Second Motion and the Supplement to Second Motion 18

ARGUMENT 18

A. Standard of Review 18

B. Judge Young Correctly Concluded That Judge Hall's Prior Order Precluded the Request for Preliminary Injunctive Relief in Dr. Thompson's Duplicative Second Motion and Supplement to Second Motion 18

1. Judge Young Correctly Held That the Denial of Dr. Thompson's First Motion Foreclosed Her Subsequent Requests for Preliminary Injunctive Relief 19

2. The Cases That Dr. Thompson Cites Are Inapposite 23

3. Dr. Thompson's Reliance on Rule 54(b) Is Misplaced 24

C. The Order Correctly Determined That Dr. Thompson Has Not Carried Her Heavy Burden of Showing Entitlement to Preliminary Injunctive Relief...26

1. The Second Order Correctly Concluded That Dr. Thompson Has Not Shown That She Will Suffer Irreparable Harm Without an Injunction.......................................27

a. Move from Riley Center 28

b. Denial of Opportunity for Pay Raises...............................30

c. HEHP Chairperson Position 31

2. Dr. Thompson Has Not Shown That She Is Likely to Succeed on the Merits..35

a. Dr. Thompson Has Not Shown That She Is Likely to Succeed on the Merits of Her Claim That CofC Breached the MOU by Moving Her Office From the Riley Center 37

b. Dr. Thompson Has Not Shown That She Is Likely to Succeed on the Merits of Her Claim That CofC Illegally or Improperly Denied Her the Opportunity to Apply for the HEHP Chair Position 39

3. The Court Should Affirm Judge Young's Denial of a Preliminary Injunction Because Dr. Thompson Has Not Proven the Absence of an Adequate Legal Remedy......................41

D. The Court's Order Correctly Recites the Relevant Facts Based on the Record 41

CONCLUSION...45

TABLE OF AUTHORITIES

CASES

Alala v. Peachtree Plantations, Inc.,
292 S.C. 160, 355 S.E.2d 286 (Ct. App. 1987)....................35

Berman v. N.Y.C. Ballet, Inc.,
616 F. Supp. 555 (S.D.N.Y. 1985)....................32

Bethel Methodist Episcopal Church v. City of Greenville,
211 S.C. 442, 45 S.E.2d 841 (1947)....................30

Carlson v. Boston Science Corp.,
856 F.3d 320 (4th Cir. 2017)....................26

Carolina Cable Network v. Alert Cable TV,
316 S.C. 98, 447 S.E.2d 199 (1994)....................38

Charleston Cty. Dep't of Soc. Servs. v. Father (in the Interest of Two Minors),
317 S.C. 283, 454 S.E.2d 307 (1995)....................19

Childs v. Columbia,
87 S.C. 566, 70 S.E. 296 (1911)....................38-39

Coinmach Corp. v. Fordham Hill Owners Corp.,
770 N.Y.S.2d 310 (N.Y. Sup. Ct. 2004)....................23

Compton v. South Carolina Dep't of Corr.,
392 S.C. 361, 709 S.E.2d 639 (2011)....................26-27, 35

County of Richland v. Simpkins,
348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002)....................18, 26

Dorchester Cty. Dep't of Soc. Servs. v. Miller,
324 S.C. 445, 477 S.E.2d 476 (Ct. App. 1996)....................19

Enoree Baptist Church v. Fletcher,
287 S.C. 602, 340 S.E.2d 546 (1986)....................19

FOP Library of Cong. Labor Comm. v. Library of Cong.,
639 F. Supp. 2d 20 (D.D.C. 2009)....................32

Gessler v. Madigan,
322 N.E.2d 127 (Ohio Ct. App. 1974)....................23

Harder v. Vill. of Forest Park, No. 05 C 5800,
2005 U.S. Dist. LEXIS 28068 (N.D. Ill. Nov. 14, 2005)....................32

Hook Point, LLC v. Branch Banking & Tr. Co.,
397 S.C. 507, 725 S.E.2d 681 (2012) 18, 26

Hornig v. Trustees of Columbia Univ.,
2018 U.S. Dist. LEXIS 189268 (S.D.N.Y. Nov. 5, 2018) 29

IAC, Ltd. v. Bell Helicopter Textron, Inc.,
160 S.W.3d 191 (Tex. Ct. App. 2005) 33, 34

Kirk v. Clark,
191 S.C. 205, 4 S.E.2d 13 (1939) 27

Levine v. Spartanburg Reg'l Servs. Dist., Inc.,
367 S.C. 458, 626 S.E.2d 38 (Ct. App. 2005) 33-34

McWilliams v. Frankton-Lapel Cmty. Schs, No. 1:20-cv-01419-JPH-TAB,
2020 U.S. Dist. LEXIS 146767 (S.D. Ind. Aug. 14, 2020) 32

Morris-Shea Bridge Co. v. Cajun Indus., LLC, No. 3:20-cv-00342,
2021 U.S. Dist. LEXIS 92899 (S.D. Tex. May 17, 2021) 26

Peek v. Spartanburg Reg'l Healthcare Sys.,
367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005) 18

People of Colo. ex rel. Watrous v. Dist. Ct. of U.S. for Dist. of Colo.,
207 F.2d 50 (10th Cir. 1953) 24

Pittsburgh Logistics Sys., Inc. v. LaserShip. Inc.,
No. 2:18-CY-1382, 2019 WL 2443035 (W.D. Pa. June 12. 2019) 23

Player v. Chandler,
299 S.C. 101, 382 S.E.2d 891 (1989) 35

Poole v. Incentives Unlimited, Inc.,
338 S.C. 271, 525 S.E.2d 898 (Ct. App. 1999) 35

Porter v. Chevron Appalachia. LLC,
204 A.3d 411 (Pa. Super. Ct. 2019) 23

Poynter Invs. v. Century Bldrs. of Piedmont,
387 S.C. 583, 694 S.E.2d 15 (2010) 27

Premier Health Care Servs. v. Schneiderman, Appellate Case No. 18795, 2001
Ohio App. LEXIS 5170 (Ct. App. Aug. 21, 2001) 25

Schrier v. University of Colo.,
427 F.3d 1253 (10th Cir. 2005) 33

Scratch Golf Co. v. Dunes W. Residential Golf Props.,
361 S.C. 117, 603 S.E.2d 905 (2004) 18, 26

Sellers v. Nicholls,
432 S.C. 101, 851 S.E.2d 54 (Ct. App. 2020) 19

Softchoice Corp. v. MacKenzie,
636 F. Supp. 2d 927 (D. Neb. 2009) 23

South Carolina v. United States,
232 F. Supp. 3d 785 (D.S.C. 2017) 26

State ex rel. Daniel v. Broad River Power Co.,
157 S.C. 1, 153 S.E. 537 (1929) 38-39

Stevens and Wilkinson of S.C., Inc. v. City of Columbia,
409 S.C. 568, 762 S.E.2d 696 (2014) 36

Strategic Resources Co. v. BCS Life Ins. Co.,
367 S.C. 540, 627 S.E.2d 687 (2006) 18

Townes Associates, Ltd. v. City of Greenville,
266 S.C. 81, 221 S.E.2d 773 (1976) 18

Transcontinental Gas Pipe Line Corp. v. Porter,
252 S.C. 478, 167 S.E.2d 313 (1969) 35

STATUTES/RULES/REGULATIONS

S.C.R. Civ. P. 54 .... 24, 25

S.C.R. Civ. P. 59 .... 12, 25

S.C. Code § 15-77-300 9

OTHER SOURCES

1 Corbin on Contracts § 2.8 36

1 Corbin on Contracts § 4.1 36

STATEMENT OF ISSUES ON APPEAL

A. Did Judge Young correctly deny Appellant's second motion for preliminary injunctive relief, where Judge Hall had previously denies preliminary injunctive relief?

SUGGESTED ANSWER: *Yes.*

B. Did Judge Young correctly conclude that Appellant failed to carry her heavy burden of showing irreparable harm in the absence of a preliminary injunction?

SUGGESTED ANSWER: *Yes.*

C. Did Judge Young correctly conclude that Appellant failed to carry her heavy burden of showing that she is likely to succeed on the merits of her claims?

SUGGESTED ANSWER: *Yes.*

D. Did Judge Young correctly conclude that Appellant failed to carry her heavy burden of showing the absence of an adequate legal remedy?

SUGGESTED ANSWER: *Yes.*

E. Did Just Young correctly recite relevant facts based on the record?

SUGGESTED ANSWER: *Yes.*

STATEMENT OF THE CASE

A. Factual Background

The allegations of Appellant's Complaint (as to which Respondents reserve all rights and which Respondents do not hereby admit) are as follows:

1. The Memorandum of Understanding

Appellant-Plaintiff Olivia M. Thompson, Ph.D., M.P.H. ("Appellant," "Plaintiff" or "Dr. Thompson") alleges that Respondent-Defendant College of Charleston ("CofC") employed her, initially as an untenured Assistant Professor and then as a tenured Associate Professor. (*See* Pl.'s Compl. ¶ 11). She alleges that, prior to August 16, 2014, her faculty appointment was in CofC's School of Education, Health, and Human Performance ("EHHP"), under the direction and supervision of Respondent-Defendant Dean Dr. Frances C. Welch, Ph.D., M.A. ("Dr. Welch"). (*See id.* ¶ 14). She additionally claims that Dr. Welch engaged in misconduct toward her, including efforts to terminate her and reassign grants that she had obtained. (*See id.* ¶¶ 15-16). CofC and Dr. Welch are sometimes referred to herein as the "Respondents."

Dr. Thompson asserts that, as a result of Dr. Welch's actions, she and CofC executed a July 14, 2017 Memorandum of Understanding ("MOU"), which she contends is an enforceable contract. (*See generally* April 2, 2021 Mot. for Prelim. Inj. Ex. A). The MOU states:

> We, the aforementioned Provost and Executive Vice President for Academic Affairs, and deans of the School of Humanities and Social Sciences (HSS) and the School of Education, Health, and Human Performance (EHHP), agree to and recommend the following stipulations regarding the change in the faculty appointment of Dr. Olivia M. Thompson. The stipulations of this Memorandum of Understanding have been reviewed and agreed upon by Dr. Thompson as indicated by her signature under the agreement considerations noted below.
>
> - It is agreed that Dr. Thompson's tenure-track faculty line, office and any grant-related offices are to be moved from EHHP to the Joseph P. Riley Jr. Center for Livable Communities (Riley Center), (a non-academic unit);
> - Dr. Thompson's Boeing grant and any other sources of external funding follow her to the Riley Center where they are to be administratively located;
> - The effective date of this agreement is August 16, 2014;

- All of Dr. Thompson's professional activities to date would be relevant to her continuing forward toward tenure and promotion (i.e. Dr. Thompson's tenure clock will not be changed);
- Dr. Thompson will report directly to Dr. Kendra Stewart who will serve in the functional role as her department chair;
- Dr. Stewart will be responsible for determining Dr. Thompson's budgeted time for teaching, research and service and conducting Dr. Thompson' s annual evaluations;
- Dr. Thompson's basic teaching responsibilities will be three courses a semester unless grant or contract buy-outs reduce the teaching load for appropriate grant or contract duties;
- Dr. Thompson's current teaching assignments in EHHP in the Public Health Program will continue but can be modified as appropriate with the concurrence of Dr. Stewart, Dr. Hale and others who may be impacted by any modification;
- Dr. Stewart will be responsible for coordinating Dr. Thompson's panel review as she comes up for tenure and promotion;
- Construction of the panel will follow the Faculty/Administration Manual (FAM), to the extent the FAM speaks to the constitution of such panels, and beyond that will follow practices that have been developed and used for tenure-track faculty members in nondepartmental programs, including review and final approval of the panel by the Provost and strict limitations on Dr. Thompson's participation in constitution of the proposed panel; and finally,
- All policies and procedures relative to tenure and promotion (as outlined in the FAM and appropriate official communications) will need to be followed.

(*See id.*). Dr. Thompson certified that "I have read and agree to all of the stipulations noted above in regard to my faculty line being transferred from the School of Education, Health, and Human Performance to the School of Humanities and Social Sciences." (*See id.*).

Dr. Thompson alleges that, pursuant to the MOU, CofC transferred her from EHHP to the School of Humanities and Social Sciences ("HSS") effective August 16, 2014. (*See* Pl.'s Compl. ¶ 26). Further, consistent with the MOU, she reported to Dr. Stewart, her Department Chair, and had her offices moved from EHHP to the Riley Center. (*See id.* ¶ 27).

2. **The Boeing Grant**

Dr. Thompson alleges that, on or about May 14, 2018, she created a written application to Boeing seeking a grant of $250,000.00, with the grant funds to be used to fund a project entitled "Veterans Fellowship Program in Sustainable Food Systems" ("SFS Program"). (*See id.* ¶ 28). Dr. Thompson was the Principal Investigator of the SFS Program. (*See id.*). On or about August 28, 2018, Boeing accepted the application and agreed to make a grant of $250,000.00 to Defendants College of Charleston Foundation ("Foundation") for the purposes in the application; the Foundation agreed to administer the grant funds for the SFS Program, and CofC agreed to the SFS Program. (*See id.* ¶ 29). A portion of the Boeing grant funds were to be used to pay and/or fund a portion of Dr. Thompson's salary and benefits. (*See id.* ¶ 30). The Foundation administratively holds the grant funds for the SFS Program in a designated account for disbursement in accordance with the Boeing grant. (*See id.* ¶ 31).

Dr. Thompson alleges that CofC agreed to develop and implement both a professional development (continuing education) certificate program and an academic credit certificate program in Sustainable Food Systems to be administratively housed within the CofC's School of Professional Studies ("SPS"), even though Dr. Thompson's academic home would remain in the CofC's HSS. (*See id.* ¶ 32). The Boeing grant provides that monies that the operation of the SFS Program generates are to go back to program expenses. (*See id.* ¶ 33). The Boeing grant contemplates that the SFS Program would become self-sustaining and continue after Boeing's grant funds were spent or used: "After Year 2, The College of Charleston will 'tuition share' thereby paying 100% of Dr. Garrison's FTE and awarding Dr. Thompson a summer stipend to allow her to continue to direct and evaluate the certificate program." (*See id.* ¶ 33).

3. Alleged Breaches of the MOU[1]

On or about July 1, 2019 — approximately 5 years after the MOU — Dr. Welch became CofC's Interim Provost and Executive Vice President for Academic Affairs. (*See id.* ¶ 38). Dr. Thompson avers that — contrary to the MOU — Dr. Welch moved her back to the EHHP and into EHHP's Department of Health and Human Performance ("Department of HHP" or "HEHP"), contrary to the MOU. (*See id.* ¶ 39). She asserts that CofC removed her from Dr. Stewart 's supervision and that Dr. Welch returned to the EHHP to be her supervisor. (*See id.*). Dr. Thompson claims that she did not agree or consent to this action or to her placement at EHHP and was not consulted in advance, setting the stage for Dr. Welch to again retaliate against her and interfere with Dr. Thompson's Boeing-funded work and the SFS Program, but also her instructional work, promotion, and tenure-track at the CofC. (*See id.* ¶ 40). Dr. Welch did not consult with the Dean of EHHP (Dr. Courtney Howard) or the Chair of the Department of HHP (Dr. Wes Dudgeon). (*See id.* ¶ 41). Appellant Dr. Thompson claims that she repeatedly demanded that CofC honor the MOU and confirm her continued assignment to HSS (or transfer her back to HSS); she claims that CofC refused to do so. (*See id.* ¶ 42).

Appellant Dr. Thompson also alleges that Defendant Dr. Welch (with the participation of others) retaliated against her and undermined her Boeing-funded work and the SFS Program. (*See id.* ¶ 50). For example, she claims that Defendants Drs. Welch, Gibbison, and Tobin disrupted Dr. Thompson's administration of her Boeing grant and the SFS Program, with the objective of having Dr. Thompson removed as Principal Investigator. (*See id.* ¶ 51).

She also asserts that Dr. Welch removed the SFS Program's in-person academic-credit and continuing education courses from CofC's course system and SPS's online registration page. (*See id.* ¶ 52). She contends Respondent Dr. Welch and others met with Boeing on December 13, 2019

---

1 Plaintiff also claims that Defendants Foundation and Dr. Christopher R. Tobin ("Dr. Tobin") have "misappropriated and diverted a portion of Boeing's grant funds intended for the SFS Program as well as monies that had been generated from the sale of textbooks developed by Dr. Thompson with the use of previously awarded Boeing grant funds, which funds were to be used to support the Farm-to-School programming." (*See id.* ¶ 43).

to discuss the SFS Program and provided incorrect information regarding low enrollment figures in the professional development track of the SFS Program. (*See id.* ¶¶ 53-54). Dr. Thompson claims that the purpose of this meeting was to impugn her work in Boeing's eyes. (*See id.* ¶ 55).

In late December of 2019, CofC students were allegedly notified that the SFS Program would change to a 7-week program, instead of a 14-week program. (*See id.* ¶ 57). Dr. Thompson claims that this caused confusion among students who were planning to enroll or were interested in enrolling in those courses and that she was not included that change. (*See id.*). She claims that these actions interfered with the SFS Program. (*See id.* ¶ 59). Dr. Thompson alleges that this change breached the Boeing grant as well as contractual commitments between CofC and two SFS Program partners. (*See id.* ¶ 60).

Dr. Thompson alleges that, as part of its commitments regarding the SFS Program, CofC agreed to implement an academic credit certificate program within SPS. (*See id.* ¶ 63). She further avers that, to do so, CofC had to have qualified faculty teach courses in the SFS Program or join a consortium through which it could offer the courses with qualified adjunct professors. (*See id.* ¶ 64). Dr. Thompson alleges that she secured CofC's membership in AgIDEA, a consortium of universities offering agriculture/food systems courses. (*See id.* ¶ 65). She claims that, for CofC to join AgIDEA, Dr. Welch needed to authorize CofC entering into a memorandum of understanding. (*See id.* ¶ 66). Dr. Thompson claims that Dr. Welch "refused to execute the agreement with AgIDEA in retaliation against" her. (*See id.*). Appellant Dr. Thompson claims that Dr. Welch's retaliation against her "poisoned the work environment at the CofC and has caused significant reputational harm and financial damage to Dr. Thompson, including harm to her relationship with Boeing." (*See id.* ¶ 70).

Appellant Dr. Thompson alleges that, on March 17, 2020, Boeing notified her that it was withdrawing its grant funding. (*See id.* ¶ 76).

4. Alleged Events After Commencement of This Lawsuit

In her Brief, Dr. Thompson refers to several events allegedly occurring after she filed this lawsuit.

a. Alleged Relocation to Silcox Building

Dr. Thompson asserts that on March 21, 2021, she went to her office in the Riley Center for the first time in several months due to COVID. (*See* April 2, 2021 Mot. for Prelim. Inj., at 28). She claims that she observed that her office telephone had been removed without her permission. (*See id.*). The next day, she allegedly contacted CofC's IT Service Desk to request a replacement phone and was told that Dr. Kendra Stewart instructed the IT Department to disconnect her office phone in December of 2020. (*See id.*).

Dr. Thompson asserts that Dr. Wes Dudgeon indicated that CofC would move her office from the Riley Center to the Silcox Building. (*See id.*). CofC also allegedly removed Dr. Thompson from the Riley Center website and building directory. (*See id.*, at 28-29). She was also allegedly removed from the College's online Public Health Program faculty directory. (*See id.*, at 29). She claims that this makes it appear that she is no longer a professor at CofC. (*See id.*).

Appellant Dr. Thompson asserts that she contacted CofC's Facilities Management Department about the move from Riley Center to the Silcox Building. (*See id.*). She claims that the Silcox Building is in a deplorable condition and disrepair. (*See id.*). She was allegedly advised that the Silcox Building would be undergoing renovation work. (*See id.*). She additionally claims that the Silcox Building has damaged asbestos tiles, with inhalable fibers. (*See id.*). Dr. Thompson asserts that she will be unable to work from her Silcox Building office location during renovations. (*See id.*, at 30). She claims that the Silcox Building is a demonstrably inferior and less desirable location for her office. (*See id.*).

She claims that this violates the MOU, which "expressly requires that Plaintiff's tenure-track faculty line, physical office, and administrative location be in the Riley Center." (*See id.*). She additionally asserts that she was moved to the Silcox Building "as further and continued retaliation and harassment against her for her complaints against Dr. Welch, her commencement

of this present lawsuit, and her filing of a grievance with the Faculty Grievance Committee." (*See id.*). She further claims that, on June 29, 2021, after an interaction with CofC Public Safet Officers at the Riley Center, she was informed that "she was no longer permitted to be in the parking lot or otherwise on the Riley Center's premises." (*See* July 9, 2021 Suppl. Mot. for Temp. Restraining Order and Prelim. Inj., at 11 ¶ 24).

b. Chairperson Position

Dr. Thompson alleges that, on February 5, 2021, she learned that the HEHP chairperson position had become open for internal application, because Dr. Wes Dudgeon was stepping down. (*See* April 2, 2021 Mot. for Prelim. Inj., at 25-26). She contends that she sent an email to Dr. Dudgeon requesting to be considered for the vacant chairperson position, but was told that Dr. Welch imposed a February 3, 2021 deadline to express interest in the position. (*See id.*, at 26). Appellant asserted that Dr. Welch announced this deadline at a January 26, 2021 faculty meeting, which she did not attend. (*See id.*). Appellant Dr. Thompson claims that the February 3, 2021 deadline had already passed before she actually learned of the opening and that Dr. Welch informed her that she could not apply because she missed the deadline. (*See id.*). Dr. Thompson claims that she "is more experienced and has superior qualifications than the other candidate(s) who applied for the chairperson position." (*See id.*).

On February 22, 2021, Appellant Dr. Thompson filed a grievance with CofC's Faculty Grievance Committee involving Dr. Welch's refusal to consider her for the open chairperson position. (*See id.*, at 27). On March 1, 2021, the Faculty Grievance Committee issued a letter addressed to President Andrew T. Hsu and Provost Suzanne Austin stating:

> The grievant 's ultimate goal in submitting this grievance to the committee is to make the President and the Provost aware of her interest to apply and to be considered for the position of Chair of HEHP, even though review is currently in progress, because she was not made aware of the Chair position opening due to failure to post an agenda or minutes for the faculty meeting in which the position was announced. . . .
>
> The committee resolved that this is a legitimate grievance, and that the grievant is an eligible candidate for the position of Chair of HEHP and should be allowed to

> express interest in and be considered for the position, given that the search is still in progress. President Hsu and Provost Austin would therefore be made aware of her interest in the position. We agreed that the lack of an agenda and minutes from the faculty meeting where the announcement was made, or a subsequent communication to eligible tenured faculty to announce the position so they can express interest, does not promote transparency in the selection process. Allowing the grievant to be considered for the position is reasonable and does not impose undue pressure or distress on the selection process.

(*See* April 2, 2021 Mot. for Prelim. Inj. Ex. C). Appellant Dr. Thompson alleges that, despite the Faculty Grievance Committee's report, on March 10, 2021, Provost Austin notified Dr. Yiorgos Vassilandonakis, Co-Chair of the Faculty Grievance Committee, that:

> Upon review, I find the meeting procedures and the protocol followed are reasonable; notice which included a general agenda, was sent to all prospective participants. The format and content of the meeting as to those matters covered, including Dr. Wes Dudgeon's announcing his intention to leave the chairmanship at the end of his five-year term, were routine and proper. The time period for submitting an application for the chair position was reasonable; all aspects have been vetted and confirmed as proper by Vice President of Human Resources Ed Pope of the College of Charleston. Therefore, I do not find it appropriate to exempt Dr. Thompson from our hiring practices and policies in this instance.

(*See* April 2, 2021 Mot. for Prelim. Inj. Ex. D). Provost Austin advised that CofC would not consider Dr. Thompson for the open chairperson position. (*See* April 2, 2021 Mot. for Prelim. Inj., at 27).

B. Procedural History

1. Dr. Thompson's Complaint and First Request for a Preliminary Injunction

In her Complaint, Dr. Thompson alleges causes of action for: (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 Defendants; (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 Foundation and Dr. Tobin (who are not involved in this appeal); and (10) attorneys' fees and costs against CofC under S.C. Code § 15-77-300. (*See generally* June 24, 2020 Compl.).

In the injunction count of her Complaint, Dr. Thompson seeks a temporary, preliminary and permanent:

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.

(*See id.* ¶ 147). Appellant Dr. Thompson's Complaint — including her request for preliminary and permanent injunctive relief — focused on her claim that Defendants breached the MOU, which she contends is an enforceable contract.

The day after Dr. Thompson 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). In her First Motion:

> Plaintiff seeks a preliminary injunction maintaining the status quo that existed before Defendants CofC and Welch engaged in the contested matters involving Plaintiff's MOU dated July 17, 2014 and her faculty appointment. Plaintiffs (sic) seeks a preliminary injunction during this litigation restraining and enjoining Defendants CofC and Welch from unilaterally changing Plaintiff's faculty appointment, transferring or moving Plaintiff back to the CofC's EHHP, returning Plaintiff to work under Defendant Welch's supervision, removing Plaintiff's faculty appointment from Dr. Stewart's report, failing to consult with Plaintiff or obtain her agreement with the transfer of her faculty appointment, 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, and breaching or disregarding the terms and provisions of the MOU.

(*See id.*, at 20-21). As to her allegations of "irreparable harm," Dr. Thompson stated that "[u]nless an injunction is granted, Plaintiff will lose the benefits of the MOU and Plaintiff will again be subjected to the supervision of Defendant Welch and will be accountable to her, will be subject to Defendant Welch's decisions relating to performance reviews, compensation, grants, and tenure-track, will be subjected to Defendant Welch's retaliation and unlawful and improper conduct." (*See id.*, at 21).

Factually, the First Motion claimed that the MOU was intended to "relieve Plaintiff of any further accountability to Defendant Welch, to remove Defendant Welch from having any supervisory role over Plaintiff or her tenure-track, and to preclude Defendant Welch from retaliating against Plaintiff and further adversely interfering with and affecting Plaintiff's Boeing-funded work." (*See id.*, at 4). She noted that, in accordance with the MOU, she was transferred from CofC's EHHP and placed in the HSS, effective August 16, 2014; she reported to Dr. Stewart (her serving Department Chair) and her tenure-track faculty line, office, and grant-related offices were moved to the Riley Center. (*See id.*, at 5). Notwithstanding this, Dr. Thompson asserts that Respondents have violated the MOU in various ways:

- Dr. Welch unilaterally moved Dr. Thompson from HSS back to EHHP and into EHHP's Department of Health and Human Performance (*see id.*, at 8). Dr. Thompson was removed from Dr. Stewart's report and returned to Dr. Welch's supervision (*see id.*).[2]

- Dr. Welch, Gibbison, and Tobin engaged in activities to disrupt and disparage Dr. Thompson administration of her Boeing grant and to interfere with the SFS Program. (*See id.*, at 11).

- Defendants directed the removal of SFS Program's in-person academic-credit and continuing education courses from CofC's course system and online registration. (*See id.*).

- Defendants had a secret meeting, wherein they "intentionally provided false and misleading information to Boeing regarding the reasons that enrollment in the professional development track of the SFS Program was lower than the target." (*See id.*, at 11-12).

- Defendants informed "CofC students that the SFS Program would change to a 7-week program, instead of a 14-week program." (*See id.*, at 13).

- Defendants failed to properly enter into and contract with the AgIDEA consortium, which was necessary because CofC did not have the ability to teach the SFS courses with its own faculty. (*See id.*, at 14-15).

- Defendants harassed two individuals who were teaching courses in the SFS Program by characterizing them as temporary employees, rather than independent contractors. (*See id.*, at 16).

On August 13, 2020, Judge Daniel D. Hall denied the preliminary injunction requested in Dr. Thompson's First Motion "[a]fter careful consideration" (the "First Order"). (*See* Aug. 13, 2020 Order). Dr. Thompson did *not* file a Rule 59(e) Motion to Alter or Amend the First Order. She did not file an appeal from the First Order.

2. Dr. Thompson's Second Motion for Preliminary Injunction and Supplement to Second Motion

On April 2, 2021, Dr. Thompson filed a second Motion for Preliminary Injunction ("Second Motion"), which relied on the MOU and made averments similar to the First Motion.

---

[2] Dr. Thompson claims that she "did not agree or consent to this unilateral action or to her placement at EHHP and was not even consulted before this decision was made, which set the stage for Defendant Welch to again have the opportunity to retaliate against Plaintiff and to adversely interfere with and affect not only Plaintiff's Boeing-funded work and the SFS Program, but also her instructional work, promotion, and tenure-track at the CofC." (*See id.*, at 8).

(*See generally* April 2, 2021 Pl.'s Mot. for Prelim. Inj.). In her Second Motion, Dr. Thompson requested a preliminary 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 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 id.*, at 1-2). Dr. Thompson further characterized her request for a preliminary injunction as follows:

> [A] preliminary injunction during this litigation restraining and enjoining Defendants CofC and Welch from (a) breaching, contravening, or disregarding the MOU's terms and provisions; (b) unilaterally changing or altering Plaintiff's faculty appointment, physical office location, and administrative location in contravention of the terms and provisions of the MOU (including an Order maintaining and/or restoring her tenure track faculty line, physical office, and administrative location at the Riley Center); (c) unilaterally transferring or moving Plaintiff to the EHHP in contravention of the terms and provisions of the MOU (including an Order maintaining and/or restoring her faculty appointment to the HSS); (d) unilaterally returning Plaintiff to work under Dr. Welch's supervision or unilaterally removing Plaintiff's faculty appointment from Dr. Stewart's report (including an Order removing Plaintiff from under Defendant Welch's supervision and maintaining and/or restoring her assignment or faculty appointment to the supervision of Dr. Stewart who would serve in the functional role as Plaintiff's department chairperson); (e) 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) otherwise retaliating against and harassing Plaintiff.

(*See id.*, at 31-32).[3]

On July 9, 2021, Dr. Thompson supplemented her Second Motion with her Supplemental Motion for Temporary Restraining Order and Preliminary Injunction ("Supplement to Second Motion"), 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

---

3 In the alternative, Dr. Thompson requested that:

> [I]f Plaintiff's MOU agreement with Defendants is not honored, then Plaintiff seeks a preliminary injunction during this litigation restraining and enjoining Defendants CofC and Welch from denying Plaintiff the opportunity to interview and apply for the position of Chairperson of the CofC's EHHP that is vacant or will become vacant upon the resignation of the current Chairperson (Dr. Wes Dudgeon) and restraining and enjoining Defendants CofC and Welch from disqualifying or refusing to consider Plaintiff's application for this position

(*See id.*, at 2).

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). Dr. Thompson's Supplement to Second Motion "incorporates by reference and reasserts all the facts stated in" Dr. Thomspon's Second Motion "as if reiterated herein verbatim." (*See id.*, at 6). She further asserted that "[d]espite the commencement of this lawsuit and the filing of Plaintiff's [Second] Motion for Preliminary Injunction, Defendant CofC has continued to engage in harassment, retaliation, and intimidation against Plaintiff." (*See id.*).

The Supplement to Second Motion recounted and focused on incidents that allegedly occurred on June 29, 2021. On that day, Public Safety allowed Dr. Thompson to enter the Riley Center. She observed that "two Mac computers that had been purchased with grant funds from

one of Plaintiff's Boeing grants were suddenly removed from the cubicle stations located outside of Plaintiff's Faculty Office where they had been positioned for her use." (*See id.*, at 7-8). Subsequently, Public Safety officers "charged at her in an aggressive manner while holding their hands on their holstered handguns as though they were about to pull their weapons and point or fire them at her." (*See id.*, at 8). The Supplement to Second Motion alleged that this incident "directly breached, contravened, and repudiated the terms and provisions of the written MOU and is intentionally and purposefully interfering with Plaintiff's ability to timely and properly perform her responsibilities as an employee of the CofC." (*See id.*, at 13).

3. Judge Young's Denial of the Second Motion and the Supplement to Second Motion

After a hearing on the Second Motion and Supplement to Second Motion — and the parties' submission of proposed orders — Judge Roger L. Young, Sr. entered a detailed Order Denying Plaintiffs Motion for Preliminary Injunction ("Second Order") dated November 12, 2021. (*See generally* Nov., 12, 2021 Order Denying Pl.'s Mot. for Prelim. Inj.). In its Second Order, the trial court denied Dr. Thompson's Second Motion and Supplement to Second Motion. The trial court based its ruling in the Second Order on the following grounds:

- Judge Hall's First Order precluded the granting of the relief requested in Dr. Thompson's Subject Injunction Motion: "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 Plaintiffs location or assignment." (*See id.*, at 5-6).

- Dr. Thompson has not shown that she will suffer irreparable harm in the absence of a preliminary injunction: "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." (*See id.*, at 8).

- Dr. Thompson has not shown a likelihood of success on the merits.

- Dr. Thompson has an adequate legal remedy available, which precludes the granting of preliminary injunctive relief: "Any harm to Plaintiff from CofC's actions can be remedied by an award of legal relief to compensate her for her injuries." (*See id.*, at 11).

(*See id.*).

On November 19, 2021, Dr. Thompson filed a Motion to Alter or Amend Order Denying Motions for Preliminary Injunction ("Motion to Alter or Amend"). (*See generally* Nov. 19, 2021 Mot. to Alter or Amend). On December 16, 2021, Judge Young denied Dr. Thompson's Motion to Alter or Amend. (*See generally* Dec. 16, 2021 Order Den. Pl.'s Mot. to Alter or Amend). On January 13, 2022, Dr. Thompson filed the instant Notice of Appeal from Judge Young's Second Order and the Order Denying Plaintiff's Motion to Alter or Amend. (*See generally* Jan. 13, 2022 Notice of Appeal).

For the reasons that follow, Judge Young did not err in denying Dr. Thompson's Second Motion and Supplement to Second Motion. As a result, the Court should affirm the decision of the trial court denying preliminary injunctive relief in this matter.

ARGUMENT

A. Standard of Review

"The decision whether to grant or deny an injunction is ordinarily left to the sound discretion of the trial court." *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002); *accord Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) (stating that trial court's ruling on motion for preliminary injunction is "reviewed for abuse of discretion."). "'An abuse of discretion occurs when the decision of the trial court is unsupported by the evidence or controlled by an error of law.'" *Hook Point, LLC v. Branch Banking & Tr. Co.*, 397 S.C. 507, 510-11, 725 S.E.2d 681, 683 (2012) (*quoting Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005)). "Upon review of an action in equity, this Court may make factual findings based on its own view of the preponderance of the evidence." *Scratch Golf Co. v. Dunes W. Residential Golf Props.*, 361 S.C. 117, 120-21, 603 S.E.2d 905, 907 (2004) (*citing Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)).

For the reasons that follow, Judge Young did not abuse his discretion in entering the Order and denying Dr. Thompson's request for a preliminary injunction.

B. Judge Young Correctly Concluded That Judge Hall's Prior Order Precluded the Request for Preliminary Injunctive Relief in Dr. Thompson's Duplicative Second Motion and Supplement to Second Motion.

Judge Young first based his denial of preliminary injunction on the ground that Judge Hall's denial of the First Motion barred a subsequent request for a preliminary injunction: "[w]hile Plaintiff changes the wording somewhat, she seeks essentially the same relief in her Second Motions that she sought in her First Motion." (*See* Nov. 12, 2021 Second Order, at 5). Dr. Thompson argues in this appeal that Judge Young erred in concluding that the First Order, which denied Dr. Thompson's First Motion for preliminary injunctive relief, foreclosed the subsequent granting of a preliminary injunction. Specifically, she argues that "Judge Young erroneously construed Plaintiff's motions as asking it to 'second-guess' or 'overturn' Judge Hall's

prior Order." (*See* Br. of Appellant, at 23). For the reasons that follow, Judge Young's reasoning was sound and correct.

1. **Judge Young Correctly Held That the Denial of Dr. Thompson's First Motion Foreclosed Her Subsequent Requests for Preliminary Injunctive Relief**

"'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, Judge Young properly exercised his discretion and concluded that he should not second-guess Judge Hall's First Order, which denied Dr. Thompson's First Motion for a preliminary injunction.

The Second Motion and Supplement to Second Motion were really just extensions of Dr. Thompson's First Motion. Much like her First Motion, the Second Motion and Supplement to Second Motion are built upon the premise that Respondents engaged in conduct that violated the terms of her MOU with CofC. This is merely a continuation of the contentions that Dr. Thompson previously made — and Judge Hall rejected — in her First Motion. For example, Dr. Thompson's April 2, 2021 Second Motion states that "notwithstanding the pendency of this lawsuit, Defendants *have continued* to breach, contravene, and disregard the clear terms and provisions of the written MOU." (*See* April 2, 2021 Second Mot., at 2 (emphasis added)). She further claims that Respondents "*continued* to retaliate against, harass, and cause financial harm to Plaintiff while this litigation has been ongoing." (*See id.*, at 2-3 (emphasis added)). In fact, Dr. Thompson's April 2, 2021 Second Motion dedicates *almost 25 pages* (of a total length of 33 pages) to cataloging Respondents' alleged misconduct that occurred *prior to the commencement of this lawsuit (and before the First Order)*.

Similarly, Dr. Thompson's Supplement to Second Motion states that "notwithstanding the pendency of this action *and the filing of Plaintiff's previous Motion for Preliminary Injunction, Defendant CofC has continued* to engage in retaliatory conduct, harassment, and intimidation towards Plaintiff." (*See* July 9, 2021 Pl.'s Supp. to 2d Mot., at 2 (emphasis added); *accord id.*, at 6 ("Defendant CofC *has continued* to engage in harassment, retaliation, and intimidation against Plaintiff.") (emphasis added)). She further argues in the Supplement to Second Motion that "Plaintiff's verified Complaint seeks an order enforcing the terms and provisions of the written *MOU*. The verified Complaint also specifically seeks to restrain and enjoin Defendant CofC and others from *breaching, contravening, or disregarding the MOU's terms and provisions*." (*See id.*, at 3 (emphasis added)). The remainder of the Supplement to Second Motion is dedicated to assertions that CofC wrongfully removed Dr. Thompson from the Riley Center. Likewise, Dr. Thompson's Affidavit offered in support of her Second Motion and Supplement to Second Motion states that "[t]he primary purpose of the motions has been to obtain an Order" restraining CofC "from breaching the terms of a written contract [the MOU]" and to stop alleged retaliation. (*See* October 22, 2021 Affid. of Olivia Thompson ¶ 2).

In other words, Dr. Thompson's Second Motion and Supplement to Second Motion focused on the same allegations of breaches of the MOU, albeit with some different allegations with regard to specific conduct. The Second Motion and Supplement to Second Motion were extensions of the same arguments underlying Dr. Thompson's First Motion — with the same legal and factual underpinnings (*i.e.,* alleged conduct in violation of the MOU). In particular, Dr. Thompson contends that CofC violated her rights by breaching the MOU. She has not presented any evidence or cited to any authority supporting that her current arguments about CofC's *continuation* of its alleged prior breaches of the MOU would somehow take the Second Motion and Supplement to Second Motion outside of the scope of the First Order. Dr. Thompson has not set forth any reason why Judge Young erred in deferring to Judge Hall's prior denial of injunctive relief.

The specific relief Dr. Thompson requested in her First Motion and Second Motion and Supplement to Second Motion is set forth at length, *supra*. While Dr. Thompson changes the

wording somewhat, she seeks essentially the same relief in her Second Motion and Supplement to Second Motion 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 Dr. Thompson's location or assignment. However, Judge Hall already denied her request for a preliminary injunction "[a]fter careful consideration."

Dr. Thompson argues that the trial court should have disregarded Judge Hall's First Order because he did not receive memoranda and did not conduct a hearing. However, Dr. Thompson never filed a motion for reconsideration, a motion to alter or amend or any other motion asking Judge Hall to revisit his First Order. As a result, the trial court properly respected Judge Hall's First Order denying Dr. Thompson's initial request for preliminary injunctive relief.

In support of her argument that Judge Young erred in deferring to the First Order, Dr. Thompson argues that the Second Motion and Supplement to Second Motion focused on the following conduct occurring after she filed this lawsuit and after Judge Hall's August 13, 2020 First Order (*i.e.,* conduct allegedly occurring between December, 2020 and July, 2021):

- the CofC's disconnection of Appellant's office telephone in December 2020 and her removal from the Riley Center website and building directory without her knowledge or permission

- Dr. Welch's arbitrary refusal in February 2021 to consider Appellant's application for the HEHP Chairperson position vacated by Dr. Wes Dudgeon

- Dr. Welch's complete removal of Appellant's faculty office from the Riley Center and Dr. Welch's relocation of Appellant's office to the Silcox Building in March 2021

- the CofC's actions in physically removing Appellant from the Riley Center in April 2021 and barring her access to her faculty office and personal property in that building, and

- the CofC's actions in July 2021 in excluding Appellant from the opportunity to obtain a faculty merit pay raise while other faculty members were offered this opportunity.

(*See* Second Motion). These points can be boiled down to three separate items: (a) displacement of Dr. Thompson from the Riley Center; (b) the refusal to consider Dr. Thompson for the HEHP chair position; and (c) excluding Dr. Thompson from consideration for a merit pay raise. Dr. Thompson argues that her reliance on these allegations of this conduct occurring after commencement of the lawsuit protects her from the preclusive effect of the First Order. However, upon closer analysis, it is apparent that Dr. Thompson's alleged "new" conduct did not prevent Judge Young from deferring to Judge Hall's First Order.

Dr. Thompson first argues that her Second Motion and Supplement to Second Motion alleges "new" conduct, consisting of allegations that Respondents disconnected her Riley Center phone and took her off the Riley Center website, completely removed Dr. Thompson's office from the Riley Center, and "physically remov[ed] Plaintiff from the Riley Center in April 2021 and barr[ed] her access to her faculty office and personal property in that building." This is the same sort of conduct for which the trial court refused to grant an injunction in Judge Hall's First order. For example, Dr. Thompson's Complaint alleges that, under the MOU, her offices were to move to the Riley Center. (*See* Pl.'s Compl. ¶ 25). She further asserted in her First Motion that "MOU specifically mandate[s] that . . . Plaintiff's tenure-track faculty line, office, and any grant-related offices are to be *moved from EHHP to the Riley Center*, where they would be administratively housed or located." (*See* June 25, 2020 Mot. for Prelim. Inj., at 5 (emphasis added)). She further alleges that her offices were moved from EHHP to the Riley Center consistent with the MOU. (*See id.*). She expressly requested a preliminary injunction "restraining and enjoining Defendants CofC and Welch from unilaterally transferring or *moving Plaintiff back to the CofC's EHHP.*" (*See id.*, at 1 (emphasis added)). Thus, the First Motion sought — and Judge Hall denied — an injunction preventing Respondents from removing her from Riley Center. This is the same relief requested in the Second Motion and Supplement to Second Motion. Although the later motions contain certain additional factual allegations, they still requested the same relief — an injunction precluding Respondents from removing Dr. Thompson from her assignment at Riley Center.

Dr. Thompson next argues that her Second Motion and Supplement to Second Motion raised novel issues because she asserted that — after the First Order — CofC did not properly notify her a department chair opening (February, 2021) and excluded her from opportunities to obtain a merit pay raise (July, 2021). (*See* Pl.'s April 2, 2021 Second Mot., at 2-3). As discussed below, Dr. Thompson cannot show irreparable harm in connection with this request for injunctive relief. Furthermore, Dr. Thompson did not amend her Complaint to allege a claim concerning such alleged conduct.

Dr. Thompson finally argues that her Second Motion and Supplement to Second Motion raised new conduct concerning her alleged exclusion from consideration for a merit pay raise. Once again, as discussed below, this putative ground for a preliminary injunction — if Judge Hall's First Order does not foreclose it — is without merit because Dr. Thompson cannot show irreparable harm or a likelihood of success on the merits.

For the foregoing reasons, Judge Young correctly denied Dr. Thompson's Second Motion and Supplement to Second Motion, in light of Judge Hall's First Order.

2. The Cases That Dr. Thompson Cites Are Inapposite

In her Brief of Appellant, Dr. Thompson argues that the trial court's denial of her First Motion did not prevent her from asking the trial court for injunctive relief a second time:

> Our law accords with the law in other jurisdictions. Numerous state and federal courts have held that "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-CY-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.").

(*See* Appellant's Br. at 27-28). However, these cases are inapposite. The trial court did not prevent — and is not preventing — Dr. Thompson from litigating the merits of any substantive factual or legal issues addressed in Judge Hall's order. Respondents are not arguing that Judge Hall's order has final preclusive effect on the merits with regard to any final remedies that may be available to Dr. Thompson. Rather, Judge Young merely respected a prior judge's decision that this case does not call for the extraordinary remedy of preliminary, interim injunctive relief to maintain the *status quo* during litigation. The cases that Dr. Thompson cites do not warrant a trial court revisiting a denied request for a *preliminary* injunction.

For the foregoing reasons, the Court should affirm Judge Young's denial of preliminary injunctive relief.

3. __Dr. Thompson's Reliance on Rule 54(b) Is Misplaced.__

Dr. Thompson further argues that, even if Judge Hall's First Injunction Order addressed the issues raised in the Second Motion and Supplement to Second Motion, the Court may ignore or change that Order under South Carolina Rule of Civil Procedure 54(b):

> When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, *any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.*

See S.C.R. Civ. P. 54(b) (emphasis added). For the following reasons, Rule 54(b) does not provide a proper basis for this Court to reverse Judge Young's denial of a Dr. Thompson's second request for a preliminary injunction.

Initially, Rule 54(b) does not apply here, because the Judge Hall's First Order was not an order adjudicating "the claims or the rights and liabilities" of any parties. It is not a final decision as to any specific cause of action. It does not dismiss claims against any of the Defendants. Rather, it is an order concerning an interim *remedy* of a party. Appellant Dr. Thompson has not cited to any authority supporting the use of Rule 54(b) to overturn one judge's prior denial of an injunction. *See Premier Health Care Servs. v. Schneiderman*, Appellate Case No. 18795, 2001 Ohio App. LEXIS 5170, at *11 (Ct. App. Aug. 21, 2001) ("A preliminary injunction is a remedy; it is not a cause of action or a claim for relief. Therefore, an order granting or denying a preliminary injunction is not subject to the requirements of Civ. R. 54(B).").

Moreover, applying the federal[4] counterpart to Rule 54(b), the Fourth Circuit has noted that a court's ability to revise an order under Rule 54(b) is not without boundaries:

> [T]he discretion Rule 54(b) provides is not limitless. For instance, courts have cabined revision pursuant to Rule 54(b) by treating interlocutory rulings as law of the case. [Citations omitted.] The law-of-the-case doctrine provides that in the interest of finality, "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." [Citations omitted.] Thus, a court may revise an interlocutory order under the same circumstances in which it may depart from the law of the case: (1) "a subsequent trial produc[ing] substantially different evidence"; (2) a change in applicable law; or (3) clear error causing "manifest injustice." [Citations omitted.] This standard closely resembles the standard applicable to motions to reconsider final orders pursuant to Rule 59(e), but it departs from such standard by accounting for potentially different evidence discovered during litigation as opposed to the discovery of "new evidence not available at trial."

---

[4] "Rules 54(b)-(d) are substantially the Federal Rule" and "represent the flexibility of the Rules procedure." *See* S.C.R. Civ. P. 54, Note; *see also* Fed. R. Civ. P. 54(b) ("[A]ny order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.").

See Carlson v. Boston Science Corp., 856 F.3d 320, 325 (4th Cir. 2017). "[A] motion to reconsider an interlocutory order should not be used to rehash arguments the court has already considered merely because the movant is displeased with the outcome." *South Carolina v. United States*, 232 F. Supp. 3d 785, 793 (D.S.C. 2017). As one federal judge recent stated in the context of Rule 54(b): "Although I have broad discretion to reconsider a previous ruling under Rule 54(b), reconsideration is an extraordinary remedy that should be used sparingly." *See Morris-Shea Bridge Co. v. Cajun Indus., LLC*, No. 3:20-cv-00342, 2021 U.S. Dist. LEXIS 92899, at *2 (S.D. Tex. May 17, 2021) (citation and internal quotation marks omitted).

As set forth above, at their heart, Appellant Dr. Thompson's Second Motion and Supplement to Second Motion seek to rehash the same issues she originally set forth in her First Motion — which Judge Hall denied in the First Order. Specifically, she again asserts that she is entitled to a preliminary injunction for alleged violations of the MOU. Judge Hall has already rejected that argument, and Judge Young properly exercised his discretion to respect the prior order of a coordinate judge.

Therefore, notwithstanding Rule 54(b), the Court should affirm Judge Young's Second Order, which denied Dr. Thompson's Second Motion and Supplement to Second Motion.

C. The Order Correctly Determined That Dr. Thompson Has Not Carried Her Heavy Burden of Showing Entitlement to Preliminary Injunctive Relief.

"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 Bldrs. of Piedmont*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010).

For the following reasons, the trial court correctly concluded that Dr. Thompson did not carry her burden of proving the elements for the issuance of a preliminary injunction.

1. The Second Order Correctly Concluded That Dr. Thompson Has Not Shown That She Will Suffer Irreparable Harm Without an Injunction.

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).

Dr. Thompson claims that she will suffer irreparable harm in that she will be subjected to retaliation and deprivation of her rights under the MOU. In particular, she argues:

> If Respondents are not enjoined, Appellant will suffer interference with her ability to perform her responsibilities as a tenured Associate Professor at the CofC, including the inability to conduct in-person meetings with students and others in her faculty office in the Riley Center and her inability to access and use the equipment and facilities that come with this office location. She will be relocated from the Riley Center to an inferior office location at the Silcox Building despite the deplorable, unhealthy, unsafe, and unworkable conditions that exist there. . . .
>
> Appellant will also be denied the opportunity to apply for and obtain the merit pay increase awarded to other faculty members. Because . . . the increases range from 4% to 15% of the faculty member's annual salary — it will not be easy to calculate the financial loss to Appellant after the fact if she is not considered for the merit increase.
>
> Finally, . . . Appellant will be deprived of the opportunity to be considered for the HEHP Chairperson position. Appellant will be deprived of the opportunity for realizing an increase in standing, professional reputation, notoriety, prestige, experience, and good will accompanying the performance of the duties connected with the position of HEHP Chairperson. The value of this increase in professional standing is difficult to measure in monetary terms, thus its loss is irreparable.

(*See* Appellant's Br., at 33-34).

However, Dr. Thompson has not cited to any authority supporting that any of those alleged

harms are truly "irreparable." She has made no showing with specific evidence to support that she cannot be made whole with relief — particularly, money damages — granted at the conclusion of this case, if appropriate. Exercising its discretion, the trial court properly concluded that Dr. Thompson did not carry her heavy burden of showing that her injuries are so severe that they call for the extraordinarily rare relief of a preliminary injunction. She offered no evidence that she is in danger of sustaining any irreparable harm if the trial court denied the Second Motion and Supplement to Second Motion. As argued in more detail in the following sections, because Dr. Thompson has not carried her burden of showing irreparable harm, the Court should affirm Judge Young's Second Order, which denied injunctive relief.

a. Move from Riley Center

Appellant Dr. Thompson first argues that the trial court erred in denying her Second Motion and Supplement to Second Motion for preliminary injunction because she sustained irreparable harm from the move of her office from the Riley Center to the allegedly deficient Silcox Building. In her brief, Appellant Dr. Thompson argues that she has shown irreparable harm because "[t]he loss of a faculty office is not easily measured in monetary terms although it may have great value or benefit to the affected faculty member." (*See* Appellant's Br., at 33). She further asserts that, without a preliminary injunction, she:

> will suffer interference with her ability to perform her responsibilities as a tenured Associate Professor at the CofC, including the inability to conduct in-person meetings with students and others in her faculty office in the Riley Center and her inability to access and use the equipment and facilities that come with this office location. She will be relocated from the Riley Center to an inferior office location at the Silcox Building despite the deplorable, unhealthy, unsafe, and unworkable conditions that exist there. She will suffer injury to professional standing associated with such a demotion to an inferior office location and mental distress, embarrassment, humiliation, and indignity based on such a transfer of her faculty appointment in violation of the MOU.

(*See id.*). However, the alleged relocation of Appellant Dr. Thompson's office — even if to a "lesser" location — is not an irreparable harm warranting the extreme remedy of interim injunctive relief. To the contrary, any harm from the movement of Dr. Thompson's office can be remedied

upon the final trial of this matter on the merits.

Dr. Thompson presents no evidence to show *how* moving her offices has impacted her career. She presents no evidence of specific equipment and facilities to which CofC denied he access or the resulting harm she suffered. She presents no evidence to support that the move will cause her irreparable harm to her academic standing or professional career. She presents no evidence of how the Silcox Building is unsafe. She presents no evidence to support her conclusory statement that the Silcox Building is causing her any injury to her "professional standing." She presents no evidence that she had any property interest or ownership in an office in the Riley Center. To the contrary, she merely claims that — because the MOU moved her office to the Riley Center in 2014 — she is entitled to remain there indefinitely and that any change to her office would irreparably harm her. It is difficult to conceive of any court finding that moving an office is so damaging that the court must grant a preliminary injunction to preserve the *status quo* until the conclusion of litigation.

To the contrary, at least one court considering the issue has concluded that a move of a plaintiff's office — even to a "windowless, poorly ventilated room" — is not irreparable harm:

> Hornig's complaint about the relocation of her office to another office in the same building borders on the frivolous. At minimum, Hornig has not demonstrated that her office's relocation qualifies as an injury at all, let alone one "that cannot be remedied if a court waits until the end of trial to resolve." [(Citation omitted.)] Courts within this District have concluded that, moving an "office to a windowless, poorly ventilated room does not constitute an adverse employment action" [(citation omitted)], and Hornig has not provided any basis for the Court to conclude that she cannot return to her prior office after trial, if she succeeds.

See Hornig v. Trustees of Columbia Univ., 2018 U.S. Dist. LEXIS 189268, at *19 (S.D.N.Y. Nov. 5, 2018). Likewise, in this case, there has been no showing that the moving of Appellant Dr. Thompson's office cannot be effectively remedied after a trial on the merits.

Therefore, for the foregoing reasons, the trial court properly denied Dr. Thompson's Second Motion and Supplement to Second Motion, because the alleged move of Appellant Dr. Thompson's office from Riley Center is not "irreparable harm."

b. **Denial of Opportunity for Pay Raises**

Dr. Thompson next claims that Judge Young should have found she had established irreparable harm because CofC denied her the opportunity to apply for merit-based pay raises. Specifically, she contends that any harm in this respect is irreparable because, "[a]lthough the merit pay increase involves a monetary benefit, it will be difficult for a jury to determine exactly how much of a raise Appellant would have received if she had been properly considered for it given that the increases in salary range from 4% to 15% of the faculty member's annual salary." (*See* Appellant's Br., at 39). For the following reasons, Dr. Thompson's arguments are misplaced.

This alleged injury, at its very core, is monetary and legal. Appellant Dr. Thompson is claiming only that she should have been paid more money than she was actually paid. One can scarcely imagine a more "reparable" injury. If Dr. Thompson proves that CofC improperly denied her a pay raise, the trial court can fully compensate her for that injury after trial. Appellant Dr. Thompson cites no evidence supporting that the denial of an interim injunction granting her a 4-15% pay raise would cause irreparable harm that money damages would not remedy.

Dr. Thompson asserts that she has shown irreparable harm because — because the salary raises ranged from 4-15% — it is difficult to calculate her damages, such that an immediate injunction is necessary to make her whole. In support, she cites *Bethel Methodist Episcopal Church v. City of Greenville*, 211 S.C. 442, 45 S.E.2d 841 (1947). That case is inapposite. In *Bethel Methodist*, the Court addressed an ordinance closing a street allowing access to a predominately African-American church. The Court held that irreparable harm existed because there were *no measurable damages* (*i.e.,* any damages would be "nominal" in nature):

> Irreparable injury as used in the law of injunction, does not necessarily mean that the injury is beyond the possibility of compensation in damages; and the fact that no actual damages can be proved, so that in an action at law the jury could award nominal damages only, often furnishes the very best reason why a court of equity should interfere in a case where the nuisance is a continuous one. [Citation omitted.] This court has recently held in a related case that injunction will lie to prevent obstruction of a public street or alley if the complaining party has no adequate remedy at law.

See Bethel Methodist, 211 S.C. at 451, 45 S.E.2d at 845. In this case, on the other hand, if CofC

wrongfully denied Appellant Dr. Thompson a pay increase, damages would compensate her for that loss. A finder of fact would be capable of determining an appropriate measure of damages. As in nearly every case, the parties could present their evidence and make their arguments, and the fact finder could determine an appropriate measure of damages. The mere fact that the parties do not know with absolute certainty the percentage pay raise that Dr. Thompson actually would have obtained does not make her alleged injury "irreparable" so as to warrant a preliminary injunction.

For the foregoing reasons, the trial court properly denied summary judgment because the alleged denial of an opportunity to request a pay raise is not "irreparable harm."

c. <u>HEHP Chairperson Position</u>

Finally, Dr. Thompson argues that she will be irreparably harmed in the absence of an injunction because — well over a year ago — CofC denied her the opportunity to apply for the HEHP chair because she did not timely express her interest:

> [On April 5, 2021,] Plaintiff also received a group email from HEHP's current chairperson (Dr. Wes Dudgeon) advising faculty that an internal candidate had expressed interest in applying for the HEHP chairperson's position that had just become open for internal application (as he was stepping down from this position because he would soon complete his 5-year term).
>
> As soon as Plaintiff learned of this opening on February 5, 2021, she immediately sent an email to Dr. Dudgeon requesting to be considered for the chairperson position that will become vacant upon his resignation, only to be notified that Dr. Welch had imposed a deadline of February 3, 2021 for anyone to notify her of their interest in the position. Plaintiff is informed that Dr. Welch announced this arbitrary deadline during a faculty meeting that occurred on January 26, 2021 at which she knew Plaintiff was not present. Plaintiff was not notified before the January 26 faculty meeting that Dr. Dudgeon was resigning his position or that Dr. Welch would impose any deadline for candidates to apply for the vacant chairperson position caused by his resignation. As a result, the February 3rd deadline had already passed before Plaintiff was even made aware of the opening or the opportunity to apply for the position.
>
> Despite this situation, Dr. Welch informed Plaintiff she will not consider her for the opening based on her invocation of the arbitrary February 3rd deadline of which Plaintiff had not been notified.

(*See* Appellant's Br., at 25-26). However, Dr. Thompson's arguments are without merit, and she

has not shown irreparable harm with regard to the alleged denial of the chance to apply for this position.

Appellant Dr. Thompson presents no evidence to show how the denial of this opportunity has actually impacted her. She presents no examples of any loss of professional standing. She presents no evidence of a loss of career opportunities. Aside from her self-serving, generic statement that she "will be deprived of the opportunity for realizing an increase in standing. professional reputation, notoriety, prestige, experience, and good will accompanying the performance of the duties connected with the position" (*see* Appellant's Br., at 33), she presents no evidence at all.

Appellant Dr. Thompson has not cited to any authority to support that the denial of an opportunity to apply for a promotion or position threatens such irreparable harm that a preliminary injunction is necessary. To the contrary, the weight of authority suggests that the denial of a promotion does not cause irreparable harm. *See McWilliams v. Frankton-Lapel Cmty. Schs,* No. 1:20-cv-01419-JPH-TAB, 2020 U.S. Dist. LEXIS 146767, at *15 (S.D. Ind. Aug. 14, 2020) ("Loss of employment does not constitute irreparable injury under the preliminary injunction standard."); *FOP Library of Cong. Labor Comm. v. Library of Cong.*, 639 F. Supp. 2d 20, 24-25 (D.D.C. 2009) ("Even if plaintiffs prevail in all their claims -- denial of training, loss of promotion opportunities, forced retirement, placement into civilian rather than officer positions -- the Court could remedy these claims by ordering training, reinstatement, back pay, and the like. Indeed, courts consistently hold that economic loss . . . and loss of employment . . . are not irreparable.") (citations omitted); *Harder v. Vill. of Forest Park*, No. 05 C 5800, 2005 U.S. Dist. LEXIS 28068, at *6 (N.D. Ill. Nov. 14, 2005) ("[L]oss of wages, employee benefits, and promotion opportunities do not constitute irreparable harm."); *Berman v. N.Y.C. Ballet, Inc.*, 616 F. Supp. 555, 557 (S.D.N.Y. 1985) ("The same defect appears in plaintiff's assertion that loss of other employment opportunities will result from failure to make plaintiff the principal second violinist. If plaintiff prevails on the merits, any claimed loss of income from other employment opportunities can be compensated in damages.").

As one Court has held, in connection with a plaintiff's claimed entitled to a department

chairpersonship:

> Given these considerations, we hold that the court did not abuse its discretion in determining that, without the preliminary injunction, Dr. Schrier would not suffer irreparable harm. The purpose of a preliminary injunction is not to remedy past harm but to protect plaintiffs from irreparable injury that will surely result without their issuance. . . . Dr. Schrier has presented no evidence that his removal as Chair during the time it will take to litigate this case will have an irreparable effect in the sense of making it difficult or impossible for him to resume his chairmanship or restore the status quo ante in the event he prevails. . . . Moreover, Dr. Schrier made no attempt to apprise this court of any evidence in the record showing actual or significant risk of loss of prestige, academic reputation or professional opportunities that cannot be remedied by money damages.

See Schrier v. University of Colo., 427 F.3d 1253, 1267 (10th Cir. 2005) (citations omitted). Similarly, Dr. Thompson has not presented any evidence to show that the denial of an immediate injunction concerning the HEHP chairpersonship would injure her — reputationally, academically, or with regard to her career opportunities — in a way that could not be fully and completely remedied after trial with money damages.

In support of her claim of irreparable harm concerning the HEHP chair position, Dr. Thompson argues:

> The value of this increase in professional standing is difficult to measure in monetary terms, thus its loss is irreparable. [*Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 465, 626 S.E.2d 38, 42 (Ct. App. 2005)] (holding that physician's loss of competency if she were unable to ply her trade as the lawsuit progressed was irreparable harm and justified preliminary injunction restraining hospital from terminating her hospital privileges); *see also IAC, Ltd. v. Bell Helicopter Textron, Inc.,* 160 S.W.3d 191, 200 (Tex. Ct. App. 2005) ("'Loss of business goodwill or loss that is not easily calculated in pecuniary terms is sufficient to show irreparable injury for purposes of obtaining a temporary injunction.").

(*See* Appellant's Br., at 33-34). This argument — and the cases that Dr. Thompson cites in support — misses the mark.

In *Levine v. Spartanburg Regional*, the Court affirmed the grant of an injunction enjoining a hospital from terminating the privileges of a doctor to maintain the *status quo* during litigation. In finding that the doctor had satisfied the irreparable harm element, the Court stated:

> The trial court found that Levine, as a physician with a private practice, would

> suffer irreparable harm if an injunction was not granted. The record supports this conclusion. 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. Therefore, we find the trial court did not abuse its discretion in deciding Levine would suffer irreparable harm without injunctive relief.

See id., 367 S.C. at 465, 626 S.E.2d at 41-42. In this case, Dr. Thompson has presented no such evidence. She does not present any evidence that, as a result of the denial of this promotion, her career advancement opportunities will "erode and potentially disappear." In fact, she does not present any evidence of what the actual impact of this will be on her career. Unlike the denial of privileges at issue in *Levine*, Dr. Thompson has not shown that the opportunity at issue here would irreparably damage her professional career to such an extent that an injunction is immediately required.[5]

Therefore, for all of the foregoing reasons,[6] the trial court properly denied Dr. Thompson's second motion for a preliminary injunction because she could not show irreparable harm in connection with her allegations that she was wrongfully denied the chance to apply for the HEHP chair position.

---

[5] The Texas case that Dr. Thompson cites — *IAC, Ltd. v. Bell Helicopter* — does not aid her irreparable harm argument. In *IAC*, the issue was misappropriated trade secret information that was used to unfairly compete with the plaintiff, resulting in a potential loss of business goodwill or other losses that could not be calculated in money terms. Again, Appellant Dr. Thompson presents no evidence that the denial of this opportunity would cause so much harm to her career that she could not be compensated at a trial on the merits.

[6] Moreover, Dr. Thompson presents no evidence that Defendants did not provide her with notice of the faculty meeting where the announcement of the position was made. She does not dispute that the announcement — with the February 3 deadline — was, in fact, made at that meeting. She presents no evidence that the Defendants did anything to conceal the opening or the deadline from her. Instead, she argues that she should be excused from complying with the deadline because she did not attend the meeting. Aside from her own self-serving, conclusory statements, Dr. Thompson presents no evidence that she was the most qualified candidate and would have been selected for this position had she applied. She presents no evidence comparing her qualifications with those of other applicants for the position (and does not identify any of those applicants). As a result, Plaintiff's claim as to the HEHP chair position is little more than speculation and conjecture.

2. **Dr. Thompson Has Not Shown That She Is Likely to Succeed on the Merits.**

"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, courts 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 trial court correctly held that Dr. Thompson did not show a likelihood of success on the merits.

Initially, Dr. Thompson has not presented any evidence or cited to any authority to support her contention that the MOU is a legally enforceable contract.

First, the MOU is not enforceable because valuable mutual consideration does not support it. "[A]ll parties must be obligated under a contract in order for it to be enforceable." *Alala v. Peachtree Plantations, Inc.*, 292 S.C. 160, 167, 355 S.E.2d 286, 290 (Ct. App. 1987); *accord Poole v. Incentives Unlimited, Inc.*, 338 S.C. 271, 276, 525 S.E.2d 898, 901 (Ct. App. 1999) ("[A] covenant not to compete entered into during the employment relationship requires new consideration."). The MOU does not impose any duties on Dr. Thompson or require her to give any consideration to CofC, beyond what she was already providing as an employee. As a result, the MOU is lacking the consideration required for it to be an enforceable contract. Dr. Thompson's reliance on the MOU in her Second Motion and Supplement to Second Motion was misplaced. The trial court properly denied Dr. Thompson's second motion for preliminary injunction.

Moreover, regardless of the parties' intent, an agreement which leaves open material terms is unenforceable under South Carolina law. 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 meeting of the minds between parties with

regard to all essential and material terms of agreement." *Id.* "Thus, for a contract to be binding, material terms cannot be left for future agreement," and "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); *accord* 1 Corbin on Contracts § 4.1 ("A court cannot enforce a contract unless it can determine what it is. It is not enough that the parties think that they have made a contract. They must have expressed their intentions in a manner that is capable of being understood."); *see Stevens*, 409 S.C. at 579, 762 S.E.2d at 701 ("Even if an intention to be bound is manifested by both parties, too much indefiniteness may invalidate the agreement, because of the difficulty of administering the agreement.") (*quoting* 1 Corbin on Contracts § 2.8).

Contrary to Appellant Dr. Thompson's assertions, she has not refuted that the MOU is lacking in definiteness and is not an enforceable agreement. The MOU discusses certain then-current responsibilities of CofC that could be subject to change; it also involved possible future tenure or promotion possibilities that would all be subject to various conditions. There are no definitive time frames for CofC's alleged obligations under the MOU. Instead, the MOU is merely a recitation of certain things that CofC would (and did) do in connection with Dr. Thompson's employment. There are no specific future obligations under the MOU that Dr. Thompson asks the Court to enforce.

Dr. Thompson asserts that "CofC's own Policy Website containing its official policies includes Official Policy 2.3.1.1, which specifically addresses the nature and extent of the CofC's "contracting authority ... and how it may be exercised."" (*See* Appellant's Br., at 31). Specifically, she relies on language in Section 2.3.1.1 providing that (emphasis added) "[c]ontracts *may include*, but are not limited to: ... Memoranda of Understanding or Memoranda of Agreement." (*See id.* at 31-32). Dr. Thompson did not present this document to the trial court in its consideration of the Second Motion and Supplement to Second Motion. As a result, this argument has not properly been preserved for appellate review. Nevertheless, Section 2.3.1.1 *only* substantively addresses what contracts require certain levels of approval authority. Nothing in Section 2.3.1.1 makes this

particular MOU a legally enforceable contract or changes the law of contracts in South Carolina. Moreover, Section 2.3.1.1 states only that the definition of a contract *within that policy "may include"* memoranda of understanding. Section 2.3.1.1 does not make any statement concerning the substantive enforceability of this specific MOU.

In addition to the foregoing, as set forth below, even if the MOU could be a binding contract, Appellant Dr. Thompson has presented no evidence that she is likely to succeed on the merits of her claims that Respondents violated that contract.

a. Dr. Thompson Has Not Shown That She Is Likely to Succeed on the Merits of Her Claim That CofC Breached the MOU by Moving Her Office From the Riley Center.

Dr. Thompson argues that she is likely to succeed on the merits of her claim that CofC breached the MOU by, *inter alia*, moving her office from the Riley Center: "The MOU's terms could not be clearer that Appellant's faculty appointment was transferred and moved to the CofC's HSS; that Appellant's tenure-track faculty line, faculty office, and administrative location are to be moved to the Riley Center; and that Appellant is to report directly to Dr. Stewart . . . ." (*See* Appellant's Br., at 35). For the reasons that follow, this argument is without merit.

Dr. Thompson does not present any evidence that CofC failed to do what was set forth in the MOU. Under the MOU (assuming it is a binding contract in first instance), CofC agreed only that (effective August 16, 2014):

- Dr. Thompson would be moved from EHHP to the Riley Center;
- The Boeing grant would follow Dr. Thompson to the Riley Center;
- Dr. Thompson's tenure clock would not be changed;
- Dr. Thompson would report to Dr. Kendra Stewart, who would be "responsible for determining Dr. Thompson's budgeted time for teaching, research and service and conducting Dr. Thompson' s annual evaluations";
- Dr. Thompson's teaching responsibilities would be "three courses a semester unless grant or contract buy-outs reduce the teaching load for appropriate grant or contract duties";

- "Dr. Thompson's current teaching assignments in EHHP in the Public Health Program will continue but can be modified as appropriate with the concurrence of Dr. Stewart, Dr. Hale and others who may be impacted by any modification";
- Dr. Stewart will be responsible for coordinating Dr. Thompson's panel reviews, with the panel constructed consistent with the Faculty/Administration Manual; and
- Policies and procedures for to tenure and promotion will be followed.

(*See* April 2, 2021 Second Mot. Ex. A). Dr. Thompson does not dispute that CofC actually moved her office to Riley Center. In fact, she alleges that CofC transferred her from the EHHP to the HSS effective August 16, 2014. (*See* Pl's Compl. ¶ 26). She also concedes that, consistent with the MOU, she reported to Dr. Stewart, her Department Chair, and had her offices moved from EHHP to the Riley Center. (*See id.* ¶ 27). Dr. Thompson does not argue that CofC failed to do anything under the MOU. Rather, she claims that (years later) CofC breached the MOU by moving her out of the Riley Center.

The premise of Appellant Dr. Thompson's argument is that the move of her office to the Riley Center under the MOU was perpetual: *i.e.,* CofC could never subsequently move her out of the Riley Center (or out of Dr. Stewart's supervision). Notably, the MOU does not have any specific term and does not set any time period for the alleged undertakings thereunder. "Historically, perpetual contracts have not been favored in South Carolina and are generally upheld only where the perpetual nature of the agreement is an express term of the contract." *Carolina Cable Network v. Alert Cable TV*, 316 S.C. 98, 101, 447 S.E.2d 199, 201 (1994). In the absence of an express statement of the duration of the contract, South Carolina law is clear that even apparently-indefinite contracts are terminable by either party:

> Where the parties to a contract express no period for its duration, and no definite time can be implied from the nature of the contract or from the circumstances surrounding them it would be unreasonable to impute to the parties an intention to make a contract binding themselves perpetually. In such a case the Courts hold with practical unanimity that the only reasonable intention that can be imputed to the parties is that the contract may be terminated by either on giving reasonable notice of his intention to the other.

See Childs v. Columbia, 87 S.C. 566, 572, 70 S.E. 296, 298 (1911); *accord State ex rel. Daniel v.*

Broad River Power Co., 157 S.C. 1, 80, 153 S.E. 537, 564 (1929) ("This, however, would not create a contract to continue the operation of the railway indefinitely or in perpetuity without regard to whether or not reasonable compensation was afforded for the services rendered. A contract resulting in an obligation so onerous as this could not be thus implied.").

Even assuming that the MOU is a contract, Appellant Dr. Thompson presents no evidence that the MOU should be construed as a perpetual promise to keep her office at the Riley Center forever. The language of the MOU certainly does not state or imply that to be the case. The Court should not construe the MOU as a binding promise without any end. That is inconsistent with South Carolina contract law and the intent of the parties. Dr. Thompson has certainly not presented any evidence to support that the MOU grants her a permanent right to an office in the Riley Center (or to any other permanent rights). As a result, Dr. Thompson cannot show that she is likely to succeed on the merits of this claim.

Therefore, the trial court properly denied Dr. Thompson's second motion for preliminary injunctive relief because she cannot show that CofC breached the MOU by moving her office.

b. Dr. Thompson Has Not Shown That She Is Likely to Succeed on the Merits of Her Claim That CofC Illegally or Improperly Denied Her the Opportunity to Apply for the HEHP Chair Position.

Dr. Thompson also contends that she is likely to succeed on her claim that she was not allowed to apply for the HEHP chairperson position: "Appellant also presented evidence showing that the CofC and Dr. Welch arbitrarily refused to consider her for the HEHP Chairperson position based on Dr. Welch's decision to deem Appellant's application untimely even though Appellant was not notified of Dr. Welch's verbal deadline for submission of applications until after the deadline had already expired." (*See* Appellant's Br., at 37). For the reasons that follow, her contention is incorrect; as a result, the Court should affirm the trial court's denial of Dr. Thompson's Second Motion and Supplement to Second Motion.

Initially, Appellant Dr. Thompson presents no evidence and cites to no authority that the alleged denial of the chance to apply for this position violated the MOU (or any other putative

contract) or was otherwise legally actionable.[7] She does not cite to any specific provision of the MOU that was violated. She does not assert a claim that her civil rights were violated because she is a member of a protected class. She does not cite to any evidence or legal authority supporting that she had a legally enforceable right to apply for the department chair position.

To the contrary, the record shows — and Dr. Thompson does not dispute — that she had a full and fair opportunity to apply for chair position. She 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 apply within seven days. Dr. Thompson was aware that this meeting was taking place. Because she was not at this meeting, Dr. Thompson did not know about the deadline and did not apply on time. As a result of her missing that deadline, Dr. Thompson filed a grievance and was given a hearing before the Grievance Committee, which gave a non-binding advisory assessment. Dr. Thompson acknowledged during her grievance hearing that she does not know her faculty peer group and has never attended or taken part 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. Dr. Thompson's claims concerning the HEHP department chair position is without legal basis and is premised upon sheer speculation.

For the foregoing reasons, the Court should affirm the trial court's denial of Dr. Thompson's second motion for a preliminary injunction, because she 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 intention to be contractually bound to specific, enforceable obligations.

---

7 Under the Faculty Administration Manual, "Chairs are appointed by the Provost with the approval of the President, and serve at the pleasure of the Provost. The Provost will receive recommendations for new appointments from departmental faculty and the Dean of the school to whom the Department Chair is accountable." (*See* April 2, 2021 Second Mot. Ex. C, at 3).

3. **The Court Should Affirm Judge Young's Denial of a Preliminary Injunction Because Dr. Thompson Has Not Proven the Absence of an Adequate Legal Remedy**

Dr. Thompson argues that she does not have an adequate legal remedy because money damages would be uncertain and difficult to calculate and inadequate to compensate her. She also asserts in a conclusory fashion that money damages are insufficient because they cannot "retroactively" compensate her for not having an office in the Riley Center or not being considered for the chairpersonship position. The Court should not alter or amend the Second Order, because Dr. Thompson's arguments are without merit.

In this section of her Motion to Alter or Amend, Dr. Thompson focuses on three elements of "damage": (a) having her office moved from the Riley Center; (b) not being considered for a pay increase of 4%-15%; (c) not being considered for the HEHP chairpersonship position. However, she presents no evidence or support, aside from the *ipse dixit* of her counsel, for her contention that money damages would not adequately compensate her for her claimed injuries. Dr. Thompson has not shown that she does not have an adequate legal remedy. To the contrary (as discussed above in the irreparable harm sections), she has an adequate legal remedy in the form of a jury trial for money damages. Legal damages can remedy any claimed harm to Dr. Thompson from CofC's actions and compensate for her injuries.

Therefore, the Court should affirm the trial court's denial of Dr. Thompson's second request for preliminary injunctive relief.

D. **The Court's Order Correctly Recites the Relevant Facts Based on the Record.**

Dr. Thompson next argues that the trial court's "Order contains several findings of fact that are unsupported by any affidavit, testimony, or other evidence anywhere in the record. These purported factual findings are based entirely on arguments made by . . . counsel at the hearing on Appellant's motions." (*See* Appellant's Br., at 40). Specifically, Dr. Thompson challenges the following statements in Judge Young's Second Order. The challenged statements are in **bold**, followed by Respondents' response to Dr. Thompson's contentions. For the reasons set forth below, Judge Young did not engage in any reversible error with regard to these alleged statements.

1. **For example, for the fall semester of 2021, Plaintiff is teaching three courses in her discipline *which are placed with similar disciplines in* the [CofC's] Department of Health and Human Performance [HEHP] within the [CofC's School of Education, Health, and Human Performance or 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.*" (*See* Order, at 8 (emphasis added)).**

The Second Order includes this language in its discussion of the requirement of "irreparable harm." Dr. Thompson argues that "[t]he Order cites to nothing in the record supporting any of these assertions." (*See* Appellant's Br., at 40). Characterizing them as the "above-quoted *findings*," Dr. Thompson asserts that the trial court erred in basing its Second Order on those statements. (*See id.* (emphasis added)). For the reasons that follow, the Court should not reverse the Second Order.

First, these statements in the Second Order are not controlling with regard to the Court's denial of injunctive relief. To the contrary, as the movant, Dr. Thompson alone carried the burden of proving irreparable harm. She did not do so. Irrespective of the inclusion of these comments in the Order, the result is the same: Dr. Thompson has not proven that the Court should grant a preliminary injunction. Irrespective of whether record evidence supports the above-referenced statements, the Second Order correctly concludes that "[a]lthough this case has been pending for over 15 months without injunctive relief, Appellant Dr. Thompson has not presented any evidence that she has been irreparably harmed during that time." (*See* Second Order, at 8). The Court's Second Order states, correctly, that:

> 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.*

(*See id.* (emphasis added)).

Moreover, these statements — whether from the statements of counsel or record evidence — are not "findings." These statements will have no binding impact on the Court in the future. Dr. Thompson will be free to present evidence contesting these statements at the proper time. The Second Order is merely a denial of interim injunctive relief; it is not a judgment based on an evidentiary trial.

For the foregoing reasons, the Court should not amend or alter the Second Order in connection with the above-referenced statements.

2. **"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*.... She has presented no evidence to show that she should have obtained this position." (*See* Order, at 10 (emphasis added)).**

The above-quoted statement is taken from the Second Order's discussion of the "likelihood of success on the merits" element. It is not clear what Dr. Thompson believes that the Second Order misstates. The Second Order correctly says that Dr. Thompson claims that she did not promptly apply for the HEHP chairpersonship because "she was not given notice of the deadline." This is what Dr. Thompson herself argued in her Second Motion, Supplement to Second Motion, and Motion to Alter or Amend. *The Second Order does not say that Dr. Thompson was actually given notice of the deadline.* In fact, the language of the Second Order suggests that the Court recognized that Dr. Thompson presented evidence that she did not receive actual notice of the meeting. In any event, the Second Order is not based on whether Dr. Thompson received actual notice of the open chairpersonship position.

The Second Order also correctly says that Dr. Thompson presented *no evidence* that — if she had applied for the position — she would have obtained it. The only evidence she proffers is her conclusory statement in her sworn Second Motion that "Dr. Welch has refused to consider Plaintiff's application even though Plaintiff is more experienced and has superior qualifications than the other candidate(s) who applied for the chairperson position." (*See* Pl.'s April 2, 2021

Second Mot., at 26). She also gives the self-serving opinion that she was "the most qualified" candidate and that "Dr. Pfile is less experienced than me and has demonstrably inferior qualifications for the position." (*See* Oct. 22, 2021 Affid. of Olivia Thompson ¶ 6). However, she has not presented evidence of her qualifications or the qualifications of any applicant(s) for the chairpersonship. She does not present competent evidence to show that, even if she had been informed of the position earlier, she would have been selected for it. She presents no evidence, aside from inadmissible, self-serving conclusory opinions, that she is likely to succeed on a claim that she would have obtained this position.

Therefore, the trial court did not err with regard to its findings regarding whether Dr. Thompson would have been appointed Department chair, if she would have timely expressed interest in the position.

3. "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.*" (*See* Order, at 11 (emphasis added)).

The above referenced language is contained in the trial court's Second Order's discussion of the "likelihood of success on the merits" element of preliminary injunctive relief. With regard to this language, Dr. Thompson complains that the Second Order "cites to no evidence anywhere in the record supporting the CofC's assertion that Appellant and the CofC did not intend for the MOU to be an enforceable contract" and that "[t]he only evidence in the record shows the CofC and Appellant did intend for the MOU to constitute a binding contract." (*See* Appellant's Br., at 42). However, contrary to Dr. Thompson's present arguments, the trial court's inclusion of the above-quoted language was not improper and does not require reversal, as Dr. Thompson did not carry her burden of proving that the MOU is an enforceable contract (as discussed above).

CONCLUSION

Therefore, for all of the foregoing reasons, Judge Young properly and correctly ruled in his Second Order that Dr. Thompson is not entitled to a preliminary injunction in this matter. Therefore, the Court should affirm Judge Young's Second Order.

April 15, 2022

BARNWELL WHALEY PATTERSON & HELMS, LLC

By:________________________

Randell C. Stoney, Jr., Esq. (S.C. #5375)
M. Dawes Cooke, Jr., Esq. (S.C. #1376)
John W. Fletcher, Esq. (S.C. #69550)
Allison M. Burns (S.C. #105265)
211 King Street, Suite 300 (29401)
PO Drawer H
Charleston, SC 29402
Phone: (843) 577-7700 Fax: (843) 577-7708
Counsel for Respondents College of Charleston and Frances C. Welch, Ph.D., M.A.

RECEIVED
Apr 15 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas for the Ninth Judicial Circuit

The Honorable Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2022-000044
Court of Common Pleas No. 2020-CP-10-02726

Olivia M. Thompson, Ph.D., M.P.H. .... Appellant,

v.

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

Of whom College of Charleston and Frances C. Welch, Ph.D.,
M.A. are the .... Respondents

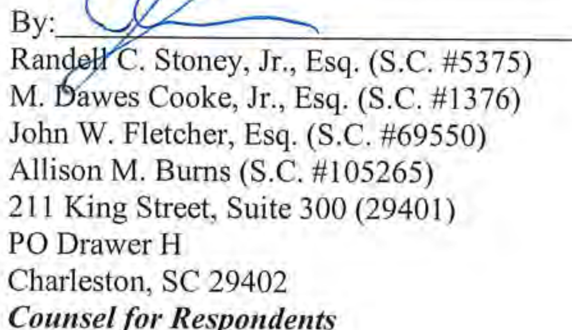
PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondents College of Charleston and Frances C. Welch, Ph.D., M.A. on the above-referenced Appellant by depositing a copy of it in the United States Mail, postage prepaid, on April 15, 2022, addressed to her attorneys of record:

Daniel F. Blanchard, III, Esq.
ROSEN HAGOOD, LLC
151 Meeting St., Suire 400
PO Box 893
Charleston, SC 29402
Counsel for Appellant

Elliot Condon
HAYNESWORTH SINKLER BOYD, P.A.
134 Meeting Street, Third Floor
Charleston, SC 29401
Counsel for Defendants College of Charleston Foundation and Christopher R. Tobin

BARNWELL WHALEY PATTERSON & HELMS, LLC



By:____________________________
Randell C. Stoney, Jr., Esq. (S.C. #5375)
M. Dawes Cooke, Jr., Esq. (S.C. #1376)
John W. Fletcher, Esq. (S.C. #69550)
Allison M. Burns (S.C. #105265)
211 King Street, Suite 300 (29401)
PO Drawer H
Charleston, SC 29402
Counsel for Respondents