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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FOR THE FIFTH JUDICIAL CIRCUIT
Alicia Pearson	C/V NO. 2019-CP-40-5221
Plaintiff	
v.	ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
Richland County,	
Defendant.	

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SC Court of Appeals

This matter is before the Court upon Defendant's Motion for Summary Judgment, heard before this Court on Thursday, August 4, 2022. For the reasons set forth herein, Defendant's Motion for Summary Judgment is hereby DENIED.

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Alicia Pearson was initially employed by Defendant Richland County as an accountant beginning in January 2017. In October of 2018, Plaintiff was promoted to Senior Accountant with Defendant's Penny Tax Program. While serving as Senior Accountant, Plaintiff had several supervisors, including Interim Transportation Director Tony Edwards, who was succeeded by Dr. John Thompson, and finally, Michael Niermier.

Niermier came to the Department in March of 2019. Shortly thereafter, during a public meeting held April 4, 2019 at the Decker Center, Mr. Niermier introduced Plaintiff and her coworkers, many of whom were also African American, as "the crew from the zoo." Plaintiff and her coworkers found Niermier's comment racially offensive, and thereafter made complaints to Mr. Niermier, Mr. Niermier's supervisor Dr. John Thompson, and the head of Defendant's Human Resources Department, Mr. Dwight Hanna. Beyond a brief meeting between the involved parties, no actions were taken with respect to Mr. Niermier's behavior.

During her time under Niermier's supervision, Plaintiff noticed a pattern of underfunded transactions related to the Penny Tax Program. Plaintiff made good faith reports of wrongdoing, bringing to Dr. Thompson's attention instances where "the funding on the contract that was bidded was not in the budget line," even though "[Niermier] asked [Plaintiff] to appropriate that purchase requisition on behalf of the department." [1] Unfortunately, these reports went unheeded, and Plaintiff eventually made reports to Senator Harpootlian regarding the matter.

Thereafter, in July of 2019, Plaintiff was informed by Niermier that she was to be transferred to the Defendant's Finance Department, under the supervision of Crystal Hill. Plaintiff's duties were changed, and she was no longer allowed direct access to vendors or necessary reports, which were instead transferred to Crystal Hill. From July 1, 2019, until December 3, 2019, Plaintiff was supervised by Crystal Hill. When Plaintiff was returned to Mr. Niermier's direct supervision, she was instructed to report to Allison Steele, the Assistant Director. Until his termination in July of 2021, Mr. Niermier continued this pattern of behavior against Plaintiff.

Plaintiff initially filed suit alleging breach of contract, promissory estoppel, and whistleblower retaliation pursuant to S.C. Code Ann § 8-27-10, et seq. on September 18, 2019. Defendant Richland County filed its Answer on November 8, 2019. Defendant's Motions to Transfer to a Non-Jury Docket and Motion for Summary Judgment were filed on January 17, 2022, and January 18, 2022, respectively. This Court held a hearing on both Motions on August 4, 2022. Having initially taken both Motions under advisement, this Court now finds these issues ripe for review.

II. LEGAL STANDARD

[1] Pl.'s Dep. 67:16-21.

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Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment is appropriate only where the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A fact is 'material' if proof of its existence or non-existence would affect the disposition of the case under the applicable law." *Anderson v. Liberty Lobby, Inc*, 477 U.S. 242, 248-49 (1986). Accordingly, "summary judgment will not lie if the dispute about a material fact is 'genuine,' [and] the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 248. In ruling on a summary judgment motion, "the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in [her] favor." Id. at 255 (quoting *Adickes v. Kress Company*, 398 U.S. 144, 158-59 (1970)).

If triable issues exist, those issues must go to the jury for consideration. *Rothrock v. Copeland*, 305 S.C. 402, 409 S.E.2d 366 (1991); *Joubert v. South Carolina Dep't of Soc. Servs.*, 341 S.C. 176, 534 S.E.2d 1 (S.C. Ct. App. 2000). Moreover, since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues. *Conner v. City of Forest Acres*, 560 S.E.2d 606, 348 S.C. 454 (S.C. 2002) (citing *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

III. ANALYSIS

A. Plaintiff's Breach of Contract Claim

In general, an at-will employee may be terminated at any time for any reason or for no reason, with or without cause. *Stiles v. Am. Gen. Life Ins. Co.*, 335 S.C. 222, 224, 516 S.E.2d 449, 450 (1999). Where an employee's at-will status has been altered by the terms of an employee handbook however, an employee, when fired, may bring a cause of action for

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wrongful discharge based on breach of contract. *Conner v. City of Forest Acres*, 348 S.C. 454, 463, 560 S.E.2d 606, 610 (2002). If an employer wishes to issue an employee handbook or manual without being bound by it and with a desire to maintain the at-will employment relationship, the employer must insert a conspicuous disclaimer into the handbook. *Small v. Springs Indus., Inc.*, 292 S.C. 481, 485, 357 S.E.2d 452, 455 (1987). The issue of whether an employee handbook constitutes a contract should be submitted to the jury when the issue of the contract's existence is questioned and the evidence is either conflicting or is capable of more than one inference. *Small*, 292 S.C. at 483, 357 S.E.2d at 454; *Williams v. Riedman*, 339 S.C. 251, 259, 529 S.E.2d 28, 32 (S.C. Ct. App. 2000). In most instances, judgment as a matter of law is inappropriate when a handbook contains both a disclaimer and promises. *Fleming v. Borden*, 316 S.C. 452, 464, 450 S.E.2d 589, 596 (1994).

In *Hessenthaler* v. *Tri-County Sister Help,* 365 S.C. 101, 108, 616 S.E.2d 694, 697 (2005), there was a disclaimer meeting the guidelines as set forth by legislature and the court. The Supreme Court of South Carolina found that as a matter of law that the Disclaimer was conspicuous, but it continued its analysis and focused on whether the handbook contained a promise. *Id.* To be enforceable in contract, general policy statements must be definitive in nature, promising specific treatment in specific situations. *Id. citing Ex parte Amoco Fabrics & Fiber Co.,* 729 So.2d 336, 339 (Ala.1998) ("[to] become a binding promise, the language used in the handbook ... must be specific enough to constitute an actual offer rather than a mere general statement of policy") (internal quotations omitted); *Id.* citing *Ross v. Times Mirror, Inc.,* 164 Vt. 13, 665 A.2d 580, 584 (1995) ("[o]nly those policies which are definitive in form, communicated to the employees, and demonstrate an objective manifestation of the employer's intent to bind itself will be enforced"); *Id.* citing *Bookman v. Shakespeare Co.,* 314 S.C. 146, 148-49, 442

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S.E.2d 183, 184 (S.C. Ct. App. 1994). An employee manual that contains promissory language and a disclaimer is "inherently ambiguous," and a jury should interpret whether the manual creates or alters an existing contractual relationship. *Fleming v. Borden, Inc.*, 316 S.C. 452, 463-64, 450 S.E.2d 589, 596 (1994) (quoting Stephen F. Befort, Employee Handbooks and the Legal Effect of Disclaimers, 13 Indus.Rel.L.J. 326, 375-76 (1991-92). *See also, Shadie Hall v. Family YMCA of Greater Augusta d/b/a YMCA Child Development Academy, LLC*, No. 1:17-cv-00337-JMC (D.S.C. July 25, 2017).

Here, this Court finds that Defendant's offered Employee Handbook, does not solely contain general policies, but informs the employee of specific promises and actions. First, Defendant maintains an anti-retaliation policy which states that "*no* employee, supervisor, or Department Head may retaliate against any individual because such individual has opposed or reported any unlawful act or practice." (emphasis added). Defendant also maintained a grievance procedure, which extended beyond any general policy, and made specific, mandatory promises to Plaintiff. Therefore, Defendant is not entitled to summary judgment on Plaintiff's claims for breach of contract.

B. Plaintiff's Promissory Estoppel Claim

Promissory estoppel requires that

> a promise [is made,] unambiguous in its terms; (2) the party to whom the promise is made reasonably relies on it; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made [sustains] injury in reliance on the promise.

Bishop v. City of Columbia, 401 S.C. 651, 738 S.E.2d 255, 261 (S.C. Ct. App. 2013) (citing *Woods v. State*, 314 S.C. 501, 505, 431 S.E.2d 260, 263 (S.C. Ct. App. 1993).

Here, Plaintiff reasonably relied on Defendant's procedures and policies as outlined in Defendant Richland County Employee Handbook. As an accountant with the Count's

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Transportation Penny Tax Program, Plaintiff was covered by Defendant's Employee Handbook and its promises, including the Grievance Procedure. Plaintiff relied on her understanding of Defendant's policies and appealed through her chain of command as the grievance procedure required. This reliance was reasonable, and in accordance with Defendant's policies. Therefore, the reliance was also foreseeable by the Defendant. Plaintiff likewise was injured in her reliance on the promise, and she was retaliated against and stripped of her duties following her attempt to avail herself of Defendant's grievance policy. Therefore, summary judgment is inappropriate on Plaintiff's promissory estoppel claim.

C. Plaintiff's Whistleblower Retaliation Claim

Defendant further claims that Plaintiff cannot state her claim under the Whistleblower Act, because she has not exhausted all administrative remedies, and has not made a report as defined by the Act. Section 8-27-30(A) provides that "[n]o action may be brought under this chapter unless (1) the employee has exhausted all available grievance or other administrative remedies; and (2) any previous proceedings have resulted in a finding that the employee would not have been disciplined but for the reporting of alleged wrongdoing." S.C. Code Ann. § 8-27-30(A). Here, Plaintiff did in fact exhaust her administrative remedies. Plaintiff appealed to Mr. Niermier, and then to Mr. Dwight Hanna and Dr. John Thompson, but these grievances were not followed through, and in fact Mr. Niermier and Assistant Director Allison Steele continually disregarded proper procedure and asked Plaintiff to file requisitions not in accordance with policy. Plaintiff then spoke with Senator Richard Harpootlian about her concerns. Furthermore, Plaintiff made, as required by the Act, written and oral statements to these individuals. *See* S.C. Code Ann § 8-27-10(4)(a).

Plaintiff also made a report of wrongdoing. As Plaintiff states in her deposition,

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“[I]t was for the Harrison Road project. And at the time, we had approximately a little over $8700 on the budget line, and he asked me to set up that requisition [. . . .] And the funding on the contract that was bidded was not in the budget line. The $10 million was not currently on the budget line at that time he asked me to appropriate that purchase requisition on behalf of the department.[2]

Here, Plaintiff has provided a specific example of Mr. Niermier's failure to account for appropriate funding on the budget line, which Plaintiff explains would eventually “hold up” invoices from payment due to lack of funds.[3]A reasonable jury could find that these repeated actions evidence ethical violations as encompassed by the Act. *See* S.C. Code Ann § 8-27-10(5).

D. Worker's Compensation Exclusivity

The Worker's Compensation Act is “the exclusive means of settling personal injury claims which come under the Act." *Loges v. Mack Trucks, Inc.,* 308 S.C. 134, 417 S.E.2d 538, 540 (1992). For an injury to be contemplated under the Act, it must be one which aris[es] out of and in the course of employment[.]” S.C. Code Ann. § 42-1-160.

In determining what constitutes an action within the scope of employment, courts look to the facts and circumstances of each individual case. Conduct is outside the scope of employment unless " it was reasonably necessary to accomplish the purpose of the servant's employment, and it was done in furtherance of the master's business." *Padgett v. South Carolina IRF,* 340 S.C. 250, 253 531 S.E.2d 305 (S.C. Ct. App. 2000). Conduct in contravention to an employer's policies likewise falls outside of the scope of employment. See *Id.* at 254. Here, whether Niermier acted in contravention to the County's policies is a question of fact for the jury. Therefore, Worker's Compensation Act's exclusivity provision does not apply.

E. SOVEREIGN IMMUNITY

[2] Pl.'s Dep. 66:19-22;67:16-21

[3] Pl.'s Dep. 68:15

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Defendant finally asserts in its Motion that Defendant is entitled to sovereign immunity with respect to Plaintiff's contract claims. For the reasons herein, this Court finds the Defendant is not entitled to sovereign immunity in this matter.

As the basis for its Motion, Defendant directs this Court to *Unisys Corp. v. SC Budget & Control Bd.*, which states that our Constitution "does not guarantee the right to a jury trial on a contract with the State." 346 S.C. 158, 551 S.E.2d 263 (S.C. 2001). However, in *McCall v. Batson* and *Kinsey Construction Co. v. S.C. Dep't of Mental Health,* our Supreme Court abolished the State's total sovereign immunity with respect to torts and contracts. *Murphy v. Richland Memorial Hosp.,* 317 S.C. 560, 455 S.E.2d 688, 690 (S.C. 1995). In response, the State passed the South Carolina Tort Claims Act, which reestablished the State's protection against tort liability, and instituted a scheme of limited liability. *Id.*

Notably, the South Carolina Tort Claims Act explicitly states that it does not affect the State's ability to contract. *See* SC Code Ann. § 15-78-20(d). Further, in In *Kinsey Construction Co. v. S.C. Dep't of Mental Health*, our Courts held that "when a State secures itself the benefits of a contract, it implicitly assumes the corresponding liabilities." 272 S.C. 168, 249 S.E.2d 900, 903 (1978). The Court explains that "it cannot be true that the State is empowered to contract with individuals and yet retains the power to avoid its obligations." *Id.*

Unisys does not overrule this holding. Indeed, the State's actions "[did] not constitute a blanket waiver of sovereignty," yet *Unisys* does not insist the State is immune from liability, but instead reaffirms it. 346 S.C. 158 at 167. Therefore, in accordance with *Kinsey,* as far as the State consents to a contract, it consents to suit on that contract. Here, the County of Richland consented to suit when it contracted with Plaintiff to secure her employment. Accordingly, we hold that Defendant is not entitled to sovereign immunity in this matter.

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IV. CONCLUSION

For the above reasons, Defendant's Motion for Summary Judgment is DENIED.

AND IT IS SO ORDERED.

L. CASEY MANNING
Circuit Court Judge,
Fifth Judicial Circuit

September 28, 2022

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