

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Alicia Pearson

Plaintiff

v.

Richland County,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/V NO. 2019-CP-40-5221

ORDER ON DEFENDANT'S MOTION TO
TRANSFER TO A NON-JURY DOCKET

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SC Court of Appeals

This matter is before the Court upon Defendant's Motion to Transfer to a Non-Jury Docket heard before this Court on Thursday, August 4, 2022. For the reasons set forth herein, Defendant's Motion to Transfer to a Non-Jury Docket is hereby and GRANTED IN PART AND DENIED IN PART.

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 bid 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.

DEFENDANT'S MOTION TO TRANSFER TO A NON-JURY DOCKET

¹ Pl.'s Dep. 67:16-21.

Defendant asserts that Plaintiff is not entitled to a jury trial on any of her claims. Plaintiff presents three claims to this Court: breach of contract, promissory estoppel, and whistleblower retaliation pursuant to S.C. Code Ann § 8-27-10, et seq. The issue of whether a claim is entitled to a jury trial is a matter of law for this Court. *See, Unisys Corp. v. S.C. Budget and Control Bd.*, 346 S.C. 158, 551 S.E.2d 263 (S.C. 2001).

"It is well-settled that art. I, § 14, secures the right to a jury trial only in cases in which that right existed at the time of the adoption of the constitution in 1868." *Id.* at 167. With respect to this rule, the State cannot be sued for torts or contracts without its consent. To determine whether a claim is entitled to a trial by jury, courts must determine whether the claim is legal or equitable in nature. Equitable actions are not entitled to a jury trial. *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240, 242 (S.C. 1996).

Plaintiff alleges two claims which are not entitled to a jury trial. First, Plaintiff's promissory estoppel claim is equitable in nature. *Thomerson v. DeVito*, 430 S.C. 246, 250; 844 S.E.2d 378 (S.C. 2020). Second, regarding Plaintiff's whistleblower claim, S.C. Code Ann § 8-27-30 states, "the employee may institute a nonjury civil action against the employing public body" pursuant to the Act. Therefore, by statute, Plaintiff's whistleblower claims are not entitled to a jury trial. In a show of judicial economy, Plaintiff likewise represents to the Court that these claims should be transferred to the non-jury roster.

However, regarding Plaintiff's claim for breach of contract, this Court finds Plaintiff is entitled to a jury trial. "An action for breach of contract is an action at law." *Consignment Sales LLC v. Tucker Oil Co.*, 391 S.C. 266, 270-71; 705 S.E.2d 73 (S.C. App. 2011) (quoting *Electro Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc.*, 357 S.C. 363, 367, 593 S.E.2d 170, 172 (S.C. Ct. App. 2004).) Whether Plaintiff is entitled to a jury trial rests on whether the State is entitled to

sovereign immunity in this matter. The question before this Court then, is whether the State is subject to suit on Plaintiff's breach of contract claim or is instead entitled to sovereign immunity. We hold that the state is liable for suit on Plaintiff's Breach of contract claim.

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.*

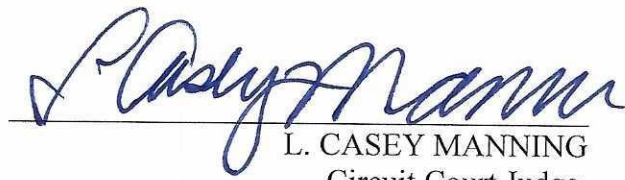
Notably, the South Carolina Tort Claims Act explicitly states that it does not affect the State's ability to contract. *See* SC Code Ann. § 15-78-20(d). Further, in *In Kinsey Construction Co. v. S.C. Dep't of Mental Health*, our Courts held that "when a State secures itself the benefits of a contract, 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. In addition, the Defendant promulgated a handbook containing policies which created a contractual relationship with Plaintiff

assuring her of 1) due consideration for specific performance of her job duties, which she performed admirably, and 2) guarantees through mandatory language a right to bring forth concerns regarding her job, ethical concerns of safeguarding taxpayer expenditures (which she did in this case), and guaranteeing no retaliation for her reports regarding improper funding, issues which directly affected the administration of tax payer funded projects under the Penny Tax Program. Accordingly, we hold that Defendant is not entitled to sovereign immunity in this matter, and Plaintiff's claims for breach of contract entitle her to a jury trial.

IT IS, THEREFORE, ORDERED that the Defendant's Motion to Transfer Case to Non-Jury Docket is GRANTED IN PART and DENIED IN PART.

AND IT IS SO ORDERED.


L. CASEY MANNING
Circuit Court Judge,
Fifth Judicial Circuit

September 28, 2022