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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Hon. L. Casey Manning, Circuit Court Judge

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Appellate Case No. 2022-001470  
Case No. 2019-CP-40-05221

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Alicia Pearson, .....

Respondent

v.

Richland County, .....

Appellant

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**INITIAL BRIEF OF RESPONDENT**

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**TABLE OF CONTENTS**

Table of Authorities .....	ii
Arguments.....	1
Conclusion .....	2

**TABLE OF AUTHORITIES**

**Cases**

*Consignment Sales LLC v. Tucker Oil Co.*, 391 S.C. 266; 705 S.E.2d 73 (Ct. App. 2011) ..... 2

*Electro Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc.*, 357 S.C. 363; 593 S.E.2d 170  
(Ct. App. 2004)..... 2

*Hodges v. Rainey*, 533 S.E.2d 578; 341 S.C. 79 (2000). ..... 1

*Kinsey Constr. Co. v. S.C. Dept. of Mental Health*, 272 S.C. 168; 249 S.E.2d 900 (1978). ..... 2

*Unisys Corp. v. S.C. Budget and Control Bd.*, 346 S.C. 158; 551 S.E.2d 263 (2001). ..... 1, 2

**Statutes**

S.C. Code Ann § 8-27-10, et seq. .... 1

**Constitutional Provisions**

S.C. Const. art. I, § 14..... 1

## ARGUMENTS

Respondent Alicia Pearson initially filed suit alleging breach of contract, promissory estoppel, and whistleblower retaliation pursuant to S.C. Code Ann § 8-27-10, et seq. Defendant Richland County filed its Answer, and subsequent Motion to Transfer to a Non-Jury Docket and Motion for Summary Judgment. On the lower court ruled in favor of the Respondent, denying Appellant's Summary Judgment Motion and ruling that Respondent was entitled to a jury trial on her breach of contract claims.

Appellant in its initial brief claims the lower court erred in deciding that Respondent was entitled to a trial by jury on her contract claims. This is not the case. Rather, as explained more fully below, the lower court did not err in ruling that Respondent's claims are entitled to a trial by jury.

"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." *Unisys Corp. v. S.C. Budget and Control Bd.*, 551 S.E.2d 263, 271; 346 S.C. 158, 167 (2001). Generally, then, in a suit against the State, the right to a jury trial exists only where the State can likewise "be sued in tort or in contract [where] the State consent[s]." *Hodges v. Rainey*, 533 S.E.2d 578, 584; 341 S.C. 79, 92 (S.C. 2000).

Here, the State has consented by entering a contract with Respondent to secure her employment. In addition, the Appellant Richland County promulgated a handbook containing policies which created a contractual relationship with Respondent 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.

“At the time our constitution was adopted in 1868, the State was immune from suit on a contract.” *Unisys*, 551 S.E.2d 263, 27; 346 S.C. 158, 173 (2001). Appellant argues that whether or not it is entitled to sovereign immunity in the present, the lack of an available action in 1868 should determine that Respondent is likewise not entitled to a jury trial. However, as explained in *Hodges v. Rainey*, the State can be sued where it consents, as it has here. 533 S.E.2d 578; 341 S.C. 79, 92 (S.C. 2000).

In *Kinsey Construction Company v. Department of Mental Health*, our Courts held that “when a State secures itself the benefits of a contract, it implicitly assumes the corresponding liabilities.” 249 S.E.2d 900, 903; 272 S.C. 168 (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.* That is, the State consents to suit insofar as it enters into a contract, and it is therefore neither immune to suit nor protected from a jury trial. *See Consignment Sales LLC v. Tucker Oil Co.*, 705 S.E.2d 73; 391 S.C. 266, 270-71 (App. 2011) (quoting *Electro Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc.*, 593 S.E.2d 170, 172; 357 S.C. 363, 367 (Ct. App. 2004) (“An action for breach of contract is an action at law.”)).”

### **CONCLUSION**

For the reasons stated herein, Respondent Alicia Pearson respectfully requests that the Court uphold the ruling of the lower court, deny Appellant’s Appeal, and remand this case to the lower court for further proceedings.

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Respectfully Submitted,

GIST LAW FIRM, PA

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**CERTIFICATE OF SERVICE**

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Pursuant to Section (d)(1) of the Supreme Court’s Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned employee of Gist Law Firm, P.A., counsel for the Respondent Alicia Pearson, does hereby certify that service of the **Initial Brief of Respondent** was made upon Appellant’s counsel by email only this the 1st day of February, 2023 as follows:

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s/ Erica McCrea