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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

Alicia Pearson,

Respondent,

v.

Richland County,

Appellant.

RECORD ON APPEAL

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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

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.*

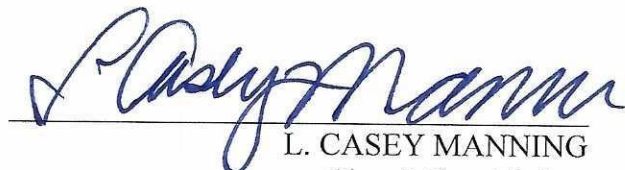
Notably, the South Carolina Tort Claims Act explicitly states that it does not affect the State's ability to contract. *See* SC Code Ann. § 15-78-20(d). Further, in *In Kinsey Construction Co. v. S.C. Dep't of Mental Health*, our Courts held that "when a State secures itself the benefits of a contract,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

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 DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

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 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.

II. LEGAL STANDARD

¹ Pl.'s Dep. 67:16-21.

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

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

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

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,

“[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 bid 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

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 *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.

IV. CONCLUSION

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

AND IT IS SO ORDERED.

September 28, 2022


L. CASEY MANNING
Circuit Court Judge,
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA)	
)	
COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
Alicia Pearson)	
)	
)	Civil Action No.
)	
Plaintiff,)	
)	
vs.)	<u>COMPLAINT</u>
)	
)	
.....)	
Richland County, South Carolina)	Jury Trial Requested
)	
)	
Defendant.)	
_____)	

Ms. Alicia Pearson, by and through her undersigned attorneys, brings this action against the above-named defendant based on the allegations set forth below.

JURISDICTION AND VENUE

1. Plaintiff Alicia Pearson is a citizen of the State of South Carolina and resides in Richland County.
2. Defendant Richland County is a political subdivision formed under the laws of South Carolina.
3. This court has jurisdiction over this action as the Complaint alleges the defendant acted in violation of one or more state laws.
4. Venue is proper in this court under S.C. Code Ann. § 15-7-30 (Supp. 2018).

FACTS OF THE DISPUTE

5. Plaintiff Alicia Pearson is currently employed by Richland County as a Senior Accountant assigned to the administration of funds obtained by the county through its implementation of a “penny tax”, as authorized by S.C. Code Ann. § 4-37-30(A) (Supp. 2018).
6. Defendant Richland County maintains an employment handbook (“Richland County Employee Handbook”, revised July 17, 2017) that contains sufficient, definite terms and

concrete assurances such that the handbook embodies an employment contract between the plaintiff and the defendant.

7. The Plaintiff accepted the Defendant's offer of employment in January of 2017 and began working for the Richland County Finance Department as an accountant shortly thereafter.

8. In or around August 2017, Ms. Pearson was promoted and reassigned to the Transportation Department as the Senior Accountant of the Richland County Penny Tax program. Plaintiff was reassigned to the Finance Department as of June 2019, reporting to Crystal Hill, Accounts Payable Manager under the supervision of Director Stacey Hamm.

9. At all times relevant to this action, the Plaintiff did perform her job duties admirably and to the best of her ability.

10. At all times relevant to this action, Defendant Richland County acted in contravention of the employment contracts or otherwise in conflict with the rights afforded the Plaintiff under the employment contracts created by Defendant's policies and procedures contained within their handbook and other contractual documents which are replete with promissory language upon which Plaintiff relied as fully described below.

11. Plaintiff was principally supervised by Michael Niermier (County Transportation Director) and Stacey Hamm (County Finance Director) as the senior accountant for the Transportation Department.

12. In or around April 4, 2019, Niermier remarked about the state of the Transportation Department at a public meeting. Niermier stated that it was his impression that those in the Transportation Department who preceded his arrival were part of "the crew from the zoo." The comment was received by several employees as being hostile and degrading, including Ms. Pearson, and subsequently she and other employees filed grievances with Human Resources in accordance with the policies and procedures of the Agency upon which Ms. Pearson relied. The Agency policies prohibit degrading and disparaging remarks by employees and management.

13. Upon information and belief, the investigation into Ms. Pearson's grievance was open and shut without seeking comment from Ms. Pearson, thus depriving Ms. Pearson of the opportunity of due process and of a fair and impartial hearing in accordance with Defendant's own policies and procedures which are part of Ms. Pearson's contractual guarantees with Defendant.

14. Ms. Pearson was subjected to retaliation by Niermier for filing her report to human resources within days of the April 4, 2019 public hearing, leading to Niermier berating her in front of others during staff meetings and reprimanding her for performing her job duties as described in her position description. Niermier's behavior amounted to unlawful harassment in violation of the policies and procedures of the Defendant upon which Ms. Pearson relied.

15. Ms. Pearson's job duties required that she "Insure (sic) that adequate internal controls exist to safeguard the County's assets."

16. Following her internal complaints, Niermier confronted Ms. Pearson in her office and ordered her to complete an incomplete payment requisition. Ms. Pearson, acted exactly as directed by Niermier and documented each of his directions to her in a recap email to Niermier, with County Administrator John Thompson carbon-copied on the same. Ms. Pearson alerted Thompson because she reasonably suspected Niermier's directions were in breach of an injunction against the defendant specifically limiting the expenditures of the defendant's transportation department.

17. Shortly thereafter, the Ms. Pearson was reassigned from Niermier's supervision to the oversight of Finance Director, Stacey Hamm. Hamm placed Ms. Pearson under the responsibility of Accounts Payable Manager Crystal Hill. This was a functional demotion.

18. This reassignment perpetuated the hostilities that had formed against Ms. Pearson among the influx of Transportation Department employees, including Hill and Niermier. Ms. Pearson was informed by Interim County Administrator John Thompson that Hamm and Hill had disparaged her and her job performance to Thompson, Niermier and other Director-level staff of other county departments.

19. Thompson only revealed this to Ms. Pearson once he came to learn that Ms. Pearson did have extensive experience and background as an accountant, contrary to the assertions being made by Hill, Hamm, and Niermier that she was unfit and unqualified for her current role.

20. Upon information and belief, the actions of Ms. Pearson's supervisors (Hill, Hamm, and Niermier) were pretextual in nature and served no purpose other than to harm Ms. Pearson's employment in an attempt to cause her to quit her job.

21. The Defendant is liable for the injuries proximately caused by these acts to include the extreme emotional distress, mental anguish, loss of sleep, actual, compensatory, and other such damages allowable by law as a result of the causes of action listed below.

For a First Cause of Action
(Breach of Contract)

22. Each and every assertion set forth herein above is repeated as fully incorporated.

23. Plaintiff and defendant entered into a valid and binding contract whereby Ms. Pearson was offered employment as Senior Accountant with Richland County.

24. Plaintiff accepted this offer and agreed to fulfill the duties of her position in exchange for valuable consideration. Plaintiff performed her duties admirably, with due diligence, and without incident throughout the term of the employment.

25. The defendant maintains written policies in the handbook and other contractual policies and procedures administered by the Defendant and relied upon by the Plaintiff promising to act in accordance with the policies stated therein.

26. With respect to the Plaintiff, the Handbook assures that she will not be subject to retaliation for having “opposed or reported any unlawful act or practice.” Plaintiff relied on these assurances in making reports to human resources of potential unlawful practices, and was the victim of retaliation and demotion by the Defendant for having made such reports all in violation of the Defendant’s contractual obligations to Plaintiff. This amounted to a clear violation of Plaintiff’s employment contract with the Defendant.

27. Defendant failed to keep additional assurances with respect to the duties delegated to Plaintiff. The defendant delegated the exclusive responsibility for completing all budget transfers and purchase orders to the Plaintiff relating to the Penny Tax. However, Niermier directed the plaintiff to process incomplete requests, even after the Plaintiff informed him that his direction was not in line with established procedures. These actions further violated Plaintiff’s employment contract with Defendant and subjected Plaintiff to extreme mental anguish and emotional distress.

28. Hamm, Niermier and other members of the Transportation Department sought to deny or severely limit the plaintiff’s right to exercise her discretion on matters within her performance responsibilities, as stated in the Handbook and her job description.

29. As a direct and proximate result of Defendant’s breaches of the Agency policies, the Agency Handbook and contract and state procedures, and regulations governing the Penny Tax expenditures, Plaintiff has been maligned and has suffered damages to include loss of sleep, mental anguish, emotional pain and suffering, and other compensatory, actual, and special

damages due to the Defendant's failure to adhere to the terms of the policies established by the Defendant resulting in a breach of Plaintiff's employment contract with the Defendant.

For a Second Cause of Action
(Promissory Estoppel)

30. Each and every assertion set forth herein above is repeated as fully incorporated.

31. The Plaintiff relied upon affirmative representations by Defendant over their course of dealing with plaintiff to include both written and oral representations by management personnel and Human Resources personnel that Plaintiff would not be retaliated against for making good faith complaints to Human Resources among other representations.

32. The defendant failed to honor its promises even as it knew that Plaintiff was satisfactorily completing her obligations under the employment contract in reliance on said dealings with defendant.

33. Plaintiff suffered damages as a detriment of relying upon the stated policies, promises and procedures of the defendant when it altered the rank and responsibility of Plaintiff's position as Senior Accountant causing her to be retaliatorily transferred and reassigned under new supervision and resulting in an effective demotion while the Plaintiff's job description has not changed.

34. The complained of actions and omissions by defendant are not in conformance with state law and other state requirements.

35. Due to the acts of the Defendant and its agents, Plaintiff is entitled to injunctive relief and civil damages, back wages plus interest, and payment for lost wages.

36. Accordingly, Plaintiff is entitled to actual and compensatory damages in the value and nature of her lost wages, benefits and front pay, with interest applied thereupon, in addition to any liquidated damages, reasonable attorneys' fees and the costs of bringing this action.

For a Third Cause of Action
(Whistleblower Retaliation under S.C. Code Ann. § 8-27-10, et seq.)

37. Each and every assertion set forth herein above is repeated as fully incorporated.

38. At times during the course of April 2019 Plaintiff emailed County Administrator John Thompson because she reasonably suspected that directions given to her by Niermer were in breach of an injunction against the defendant specifically limiting the expenditures of the defendant's transportation department.

39. That Plaintiff believed that such directions by Niermer were in violation of the law and that such belief was reasonable.

40. That as a result of Plaintiff's protected report, Plaintiff was retaliated against and demoted by the Defendant within weeks thereafter, being demoted and reassigned under the supervision of hostile and degrading supervisors whom she had previously filed complaints against with Defendant's Human Resources Department to include Hamm and Hill.

41. Richland County is required to comply with South Carolina law and failed to do so. Specifically, defendant has failed to comply with S.C. Code § 8-27-10, *et seq.*, Employment Protection for Reports of Violations of State or Federal Law or Regulation, by retaliating against plaintiff based on her filing of a protected report of wrongdoing with an appropriate authority.

42. Plaintiff is entitled to an award for actual and compensatory damages in the value and nature of her actual damages, in addition to any specific damages, reasonable attorneys' fees, and the costs of bringing this action recoverable under the applicable statutes.

JURY TRIAL REQUEST

43. Plaintiff requests a jury trial.

DAMAGES & PRAYER FOR RELIEF

44. Each and every assertion set forth herein above is repeated as fully incorporated.

45. Plaintiff agreed to accept defendant Richland County's offer of employment under terms of the employment agreement crafted and administered by the defendant when its agents promised to honor its policies and procedures in exchange for performing under the employment agreement.

46. As a direct and proximate result of the outrageous, and utterly intolerable conduct of the defendant and its agents, plaintiff was forced to endure extreme emotional distress, and incur the costs of litigation and attorneys' fees. Thereby, plaintiff is entitled to recover actual and compensatory damages from the defendant

47. WHEREFORE, the Plaintiff prays this Honorable Court declare the defendant's actions complained of herein violated the rights of the plaintiff, and issues judgment:

a. Declaring the actions complained of herein to be illegal;

- b. In favor of the plaintiff and against the defendant for each of the causes of action in an amount which is fair, just, and reasonable for compensatory and actual damages;
- c. Granting a declaratory relief enjoining the defendant, its agents, employees, successors, attorneys, and those acting in concert or participation with the defendant or at their direction, from engaging in the unlawful practice set forth herein and any other employment practices shown to violate South Carolina law;
- d. Awarding plaintiff actual and compensatory damages for the causes of action herein that a jury and this Court find appropriate, as a result of the defendant's failure to act to protect plaintiff from adverse effects of plaintiff being in its employ. These damages include mental anguish, pain and suffering, harm to plaintiff's economic opportunity, as well as back pay, front pay, travel hardships and expenses, and lost future earnings with cost of living adjustments, prejudgment interest, fringe benefits and retirement benefits;
- e. Awarding plaintiff her costs and expenses incurred prosecuting this action, including reasonable attorneys' fees, filing costs, and other litigation expenses; and,
- f. Granting such other and further relief as may necessary to afford complete relief to the plaintiff as this Court may deem just and proper.

GIST LAW FIRM, P.A.

By: s/Donald Gist
Donald Gist (13098)

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Attorneys for Plaintiff

September 17, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Alicia Pearson,)
)
Plaintiff,)

Civil Action No. 2019-CP-40-5221

v.)

ANSWER

Richland County, South Carolina,)
)
Defendant.)

_____)

The Defendant Richland County answers the Plaintiff's Complaint herein as follows:

FOR A FIRST DEFENSE

1. The Plaintiff's Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted. The Defendant reserves its right to file a motion pursuant to Rule 12(b)(6), SCRPC.

FOR A SECOND DEFENSE

2. The Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained.

3. The allegations set forth in Paragraph 1 of the Plaintiff's Complaint are, upon information and belief, admitted.

4. The allegations set forth in Paragraph 2 of the Plaintiff's Complaint are admitted.

5. The allegations set forth in Paragraphs 3 and 4 of the Plaintiff's Complaint address jurisdictional and venue matters to which no response is required.

6. As to the allegations set forth in Paragraph 5 of the Plaintiff's Complaint, the Defendant admits that the Plaintiff is employed by Richland County in the position of Senior Accountant and works with the Finance Department and in association with the Transportation Department related to the Richland County Penny Transportation Program.

7. As to the allegations set forth in Paragraph 6 of the Plaintiff's Complaint, the Defendant admits only that the County has an Employee Handbook and craves reference to the provisions and language thereof. Further answering, the Defendant denies that the Employee Handbook "embodies an employment contract between the plaintiff and defendant." Instead, the County avers that the Employee Handbook provides that employment with the County is at-will which has been acknowledged in writing by the Plaintiff.

8. As to the allegations set forth in Paragraph 7 of the Plaintiff's Complaint, the Defendant admits the Plaintiff began her employment with Richland County on January 23, 2017, as an Accountant II in the Finance Department.

9. The allegations set forth in the first sentence of Paragraph 8 of the Plaintiff's Complaint are admitted. As to the allegations set forth in the second sentence of Paragraph 8 of the Plaintiff's Complaint, the Defendant admits only that in June 2019, a realignment occurred where the Senior Accountant position for the Richland County Penny Transportation Program was placed under the supervision of the Finance Department. As such, the position was placed under the supervision of Stacey Hamm, who is the Finance Director.

10. The allegations set forth in Paragraph 9 of the Plaintiff's Complaint are denied as stated.

11. The allegations set forth in Paragraph 10 of the Plaintiff's Complaint are denied.

12. The allegations set forth in Paragraph 11 of the Plaintiff's Complaint are non-specific as for dates. Further answering, the Defendant admits that at various times the Plaintiff has been supervised by Stacey Hamm, who is the Finance Director, and by Michael Niermeier, who is the Transportation Director.

13. The allegations set forth in Paragraph 12 of the Plaintiff's Complaint are denied as stated.

14. The allegations set forth in Paragraphs 13 and 14 of the Plaintiff's Complaint are denied.

15. As to the allegations set forth in Paragraph 15 of the Plaintiff's Complaint, the Defendant craves reference to the Plaintiff's job description as to the specific language and provisions contained therein.

16. The allegations set forth in Paragraph 16 of the Plaintiff's Complaint are denied.

17. As to the allegations set forth in the first sentence of Paragraph 17 of the Plaintiff's Complaint, the Defendant admits only that in June 2019, a realignment occurred where the Senior Accountant position for the Richland County Penny Transportation Program was placed under the supervision of the Finance Department. As such, the position was placed under the supervision of Stacey Hamm, who is the Finance Director. The allegations set forth in second sentence of Paragraph 17 of the Plaintiff's Complaint are denied.

18. The allegations set forth in Paragraphs 18, 19, 20, and 21 of the Plaintiff's Complaint are denied.

19. As to the allegations set forth in Paragraph 22 of the Plaintiff's Complaint, the Defendant repeats and reiterates the corresponding responses of this Answer as if fully repeated herein verbatim.

20. The allegations set forth in Paragraphs 23 and 24 of the Plaintiff's Complaint are denied.

21. The allegations set forth in Paragraph 25 of the Plaintiff's Complaint are denied as stated. Further answering, the Defendant Richland County has an Employee Handbook that provides that employment with the County is at-will which has been acknowledged in writing by the Plaintiff.

22. As to the allegations set forth in the first sentence of Paragraph 26 of the Plaintiff's Complaint, the Defendant craves reference to the Richland County Employee Handbook for the specific provision and language referenced. The remaining allegations set forth in Paragraph 26 of the Plaintiff's Complaint are denied.

23. The allegations set forth in Paragraphs 27, 28, and 29 of the Plaintiff's Complaint are denied.

24. As to the allegations set forth in Paragraph 30 of the Plaintiff's Complaint, the Defendant repeats and reiterates the corresponding responses of this Answer as if fully repeated herein verbatim. The Defendant objects to the jumbling of causes of action.

25. The allegations set forth in Paragraphs 31, 32, 33, 34, 35, and 36 of the Plaintiff's Complaint are denied.

26. As to the allegations set forth in Paragraph 37 of the Plaintiff's Complaint, the Defendant repeats and reiterates the corresponding responses of this Answer as if fully repeated herein verbatim. The Defendant objects to the jumbling of causes of action.

27. The allegations set forth in Paragraphs 38, 39, 40, 41, and 42 of the Plaintiff's Complaint are denied.

28. Paragraph 43 is a jury trial demand which requires no response. The Defendant reserves the right to contest the Plaintiff's request for a jury trial and to seek transfer of this action to the non-jury docket in accordance with the case of *Unisys Corp. v. South Carolina Budget & Control Board*, 346 S.C. 158, 551 S.E.2d 263 (2001), and S.C. Code Ann. § 8-27-30.

29. As to the allegations set forth in Paragraph 44 of the Plaintiff's Complaint, the Defendant repeats and reiterates the corresponding responses of this Answer as if fully repeated herein verbatim. The Defendant objects to the jumbling of causes of action.

30. The allegations set forth in Paragraphs 45 and 46 of the Plaintiff's Complaint are denied.

31. The Defendant denies the allegations and relief sought as set forth in the prayer of the Plaintiff's Complaint.

FOR A THIRD DEFENSE

32. The Defendant asserts the defense of sovereign immunity, pursuant to the terms of the South Carolina Tort Claims Act, including but not limited to the definition of "loss" as set forth in S.C. Code Ann. § 15-78-30(f), the damages caps set forth in S.C. Code Ann. § 15-78-120, and the bar on the recovery of punitive damages, pre-judgment interest, and attorney's fees.

FOR A FOURTH DEFENSE

33. The Defendant is immune from suit pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, specifically S.C. Code Ann. §§ 15-78-60(1), (2), (3), (4), (5), (6), (14), (17), and (20).

FOR A FIFTH DEFENSE

34. The Plaintiff's claims are barred, in whole or in part, by the workers' compensation exclusivity defense.

FOR A SIXTH DEFENSE

35. The Defendant is entitled to absolute immunity under *Long v. Seabrook* and its progeny.

FOR A SEVENTH DEFENSE

36. The Plaintiff's claims are, in whole or in part, barred by the doctrine of sovereign immunity, including the cause of action for promissory estoppel.

FOR AN EIGHTH DEFENSE

37. The Plaintiff is an at-will employee of Richland County as a matter of law and, as such, cannot maintain a claim for breach of contract or promissory estoppel against the Defendant.

FOR A NINTH DEFENSE

38. The Plaintiff's claim under the South Carolina Whistleblower Act is barred by her failure to exhaust her grievance rights and remedies as the Act requires as a procedural prerequisite to suit under the Act per S.C. Code Ann. § 8-27-30.

FOR A TENTH DEFENSE

39. As to the Plaintiff's claim under the South Carolina Whistleblower Act, the Defendant asserts the damages and attorney's fees caps and limitations as set forth in S.C. Code Ann. § 8-27-30.

FOR AN ELEVENTH DEFENSE

40. The Plaintiff has failed to mitigate her damages, thereby barring her recovery in whole or in part.

FOR A TWELFTH DEFENSE

41. The Plaintiff's claims for breach of contract and promissory estoppel are barred, in whole or in part, by the Plaintiff's failure to exhaust her administrative remedies.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant Richland County prays that the Complaint be dismissed with prejudice; for the costs of this action; and for such other and further relief as the Court deems just and proper.

LINDEMANN, DAVIS & HUGHES, P.A.

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Counsel for Defendant Richland County

November 8, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Alicia Pearson,)
)
Plaintiff,)
)
v.)
)
Richland County, South Carolina,)
)
Defendant.)
_____)

Civil Action No. 2019-CP-40-5221

**NOTICE OF MOTION AND
MOTION TO TRANSFER CASE
TO NON-JURY DOCKET**

TO: DONALD GIST, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant Richland County will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, Columbia, South Carolina, at such time and place as may be set by the Court, for an Order, pursuant to Rule 39(a), SCRCPP, transferring this case to the non-jury docket.

The Defendant's motion is based upon the following grounds:

As the First Cause of Action pled in her Complaint, the Plaintiff Alicia Pearson alleges a breach of contract cause of action and makes a request for a trial by jury. The Plaintiff is not entitled to a trial by jury under the holding of *Unisys Corp. v. South Carolina Budget & Control Board*, 346 S.C. 158, 551 S.E.2d 263 (2001), where the Supreme Court held that there is no constitutional right to a jury trial in an action against the sovereign not recognized at the time the constitution was adopted. The breach of contract cause of action asserted by the Plaintiff in this action was not recognized and/or could not be pursued against the State or any governmental parties at the time of the adoption of the constitution in 1868. In *Unisys*, the Supreme Court expressly

recognized that “at the time our constitution was adopted in 1868, the State was immune from suit on a contract.” 551 S.E.2d at 271. The Supreme Court thus concluded that the South Carolina Constitution “does not guarantee the right to a jury trial on a contract with the State.” *Id.*

In addition, the other causes of action alleged in the Plaintiff's Complaint sound in equity to which there is no right to a trial by jury. There is no right to a trial by jury in an action sounding in equity. *See, Gardner v. Travis*, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994).

Specifically, the Plaintiff's Second Cause of Action for promissory estoppel sounds in equity. In *Thomerson v. DeVito*, 430 S.C. 246, 844 S.E.2d 378 (2020), the South Carolina Supreme Court confirmed that “South Carolina courts have consistently characterized promissory estoppel as an equitable claim.” 844 S.E.2d at 384. The Supreme Court further explained that “[m]onetary relief is not available at law for enforceable promise. Thus, monetary relief is not properly characterized as legal if the source for its recovery lies solely in a principle of equity. The claim -- and the remedy -- are still equitable because the recovery does not exist at law but is provided solely to avoid injustice in a court of equity.” 844 S.E.2d at 385.

Finally, the Plaintiff's Third Cause of Action is brought pursuant to the South Carolina Whistleblower Act, S.C. Code Ann. § 8-27-10, *et seq.* By statute, any civil action brought under the Whistleblower Act is to be tried non-jury. *See*, S.C. Code Ann. § 8-27-30(A).

The Defendant's motion is based upon the pleadings filed in this case, rules of court, and such other matters as may be properly presented to the Court at the time of the hearing.

The Defendant's counsel attempted to consult with opposing counsel prior to the filing of this motion, but at the time of filing the Plaintiff's counsel had not communicated his client's position on the motion.

LINDEMANN & DAVIS, P.A.

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Counsel for Defendant Richland County

January 13, 2022

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: Mr. Lindemann, this is your motion. It's
2 a motion for summary judgment and a motion to transfer to
3 the nonjury docket; is that correct?

4 MR. LINDEMANN: That's correct, Your Honor.

5 THE COURT: Let's see, what else is there? Did you
6 do a 12(b)(6)?

7 MR. LINDEMANN: I don't believe. No, I don't think
8 we had a 12(b)(6) in this case.

9 THE COURT: All right. You may proceed,
10 Mr. Lindemann.

11 MR. LINDEMANN: Thank you, Your Honor. Unless Your
12 Honor -- do you have a preference which motion goes first?

13 THE COURT: No, I do not.

14 MR. LINDEMANN: Okay. I was going to go ahead and
15 argue the motion to transfer to the nonjury.

16 THE COURT: I just heard the motion to transfer.

17 MR. LINDEMANN: Since that's a lot shorter.

18 THE COURT: Go ahead.

19 MR. LINDEMANN: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 MR. LINDEMANN: Your Honor, this is a --

22 THE COURT: Sometimes you're not entitled to a jury
23 trial. You made all those assertions in your motion. I
24 read them, so simplify them for me. Go ahead.

25 MR. LINDEMANN: Your Honor, this is an employment

1 case. The Plaintiff at the time the suit was filed was
2 employed by Richland County. In fact, through most of
3 this litigation, she was employed. She resigned, I think,
4 a couple of months ago. I don't have the exact date of
5 that.

6 Ultimately, Your Honor, there are three causes of
7 action, as Your Honor saw when you read the motion.
8 There's a breach of contract claim, which is based on a
9 handbook claim. There's a promissory estoppel, and then
10 there's a whistleblower claim.

11 THE COURT: Yes, sir.

12 MR. LINDEMANN: The first cause of action is breach
13 of contract, and we believe that the Plaintiff is not
14 entitled to a jury trial in that particular cause of
15 action because of the Supreme Court's decision -- I have
16 it here somewhere.

17 (Pause).

18 Unisys vs. South Carolina Budget and Control Board.
19 It's a case from 2001 where the Supreme Court indicated
20 that a breach of contract claim against a governmental
21 entity, since it did not exist at common law when the
22 Constitution was adopted in 1871, there is no right to a
23 jury trial.

24 And, specifically, in Unisys, the Court says it is
25 well settled in Article 1, Section 14, secures the right

1 to a jury trial only in cases in which that right existed
2 at the time of the adoption of the Constitution in 1868.
3 That's stated three years earlier. The right to a jury
4 trial does not apply to actions against the sovereign that
5 were not recognized in 1868.

6 So because there was no such thing as a breach of
7 contract claim, which is the same as what we had in
8 Unisys, in fact, they say at the time our constitution was
9 adopted in 1868, the State was immune from suit on a
10 contract. So, therefore, it's the same principles apply
11 here. They are not entitled to a right to a jury trial on
12 a breach of contract claim because that right didn't exist
13 in 1868.

14 As to the other two causes of action, promissory
15 estoppel is clearly an equitable claim, Your Honor. To
16 the extent there was any question about that, the Supreme
17 Court in 2020 in Thomerson vs. Devito made that very clear
18 in ruling that Statute of Limitations doesn't apply to a
19 promissory estoppel claim because it's an equitable claim.
20 So, obviously, Your Honor, for equitable claims as Your
21 Honor well knows, there's no right to a trial by a jury in
22 any type of cause of action.

23 THE COURT: Sir, are you saying these cases trumps
24 the 8th Amendment to the United States Constitution?

25 MR. LINDEMANN: Well, the -- I think it's the 7th,

1 but whichever, it was never made applicable to the states
2 through the 14th Amendment.

3 THE COURT: It's the same issue --

4 MR. LINDEMANN: It's state law that governs, that's
5 why Unisys was decided the way it was.

6 THE COURT: Well, it's the 7th or 8th that guarantees
7 the right to a trial by jury. I thought it was the 8th.
8 You said it's the 7th? It doesn't matter.

9 MR. LINDEMANN: The 8th is cruel and unusual
10 punishment. I don't think it's tacked on, but anyway, you
11 may be very well be correct.

12 And then lastly, Your Honor, there's a whistle blower
13 claim. The actual whistleblower statute itself says that
14 a cause of action exists, but it has to be tried nonjury.
15 So that's actually by statute that they're not entitled to
16 a jury trial on that particular claim, and I have that
17 statute here somewhere.

18 Basically, in 8-27-30, it says if an employee is
19 dismissed, suspended from employment, demoted or receives
20 a decrease in compensation within one year after having
21 timely reported an alleged wrongdoing, under this chapter,
22 the employee may institute a nonjury civil action against
23 the employing public body.

24 So all three causes of action, Your Honor, they're
25 not entitled to a jury trial. That's the basis for our

1 request to move it to the nonjury docket.

2 THE COURT: Thank you, Mr. Lindemann.

3 MR. LINDEMANN: Do you want me --

4 THE COURT: Just one at a time.

5 MR. LINDEMANN: Thank you, Your Honor.

6 THE COURT: Yes, sir, Mr. Gist.

7 MR. GIST: Well, I think this is -- thank you, Your
8 Honor, for the indulgence of the Court. I think we're not
9 living in the 1800s. This is 2021. There's very well
10 established case law going back to Connors vs. Forest
11 Acres, which is a case that originated here in Columbia.
12 There's also case law that has been litigated and tried
13 specifically with the right to a Plaintiff's right to a
14 jury.

15 Connors as well as Hessenthaler, which is a federal
16 case, speaks very specific to the fact that when there is
17 an issue or a question of fact that yes, the judge can
18 address the legal issues around that, but if there's
19 genuine issues of material fact that that case can, in
20 fact, go to a jury.

21 We believe if we buy Mr. Lindemann's argument that
22 none of the cases have been presented to juries throughout
23 the State of South Carolina. I'll cite several, Connors.
24 I'll also cite the case of Shady Hall, which is a case
25 that Judge Michelle Childs ruled on in 2017.

1 Shady Hall is a case -- Shady Hall vs. the North
2 Augusta YMCA. In that case, the judge said very
3 specifically, Federal Judge Michelle Childs said very
4 specifically that a plaintiff has a right to have their
5 contractual disputes when there is ambiguity with respect
6 to whether or not the evidence would be one way or the
7 other with respect to the defense or the plaintiff, it
8 should be sent on the basis of the factual pleadings to
9 the jury. If we buy Mr. Lindemann's argument, then none
10 of these cases would have existed in the State of South
11 Carolina. None would have existed.

12 When we go back and look at the Fleming case, which
13 also is a State case that the South Carolina Court of
14 Appeals addresses. It says very specifically that a
15 client, a plaintiff in this case, has a right to have a
16 jury to primarily listen to the facts, listen to the
17 genuine issues of material fact.

18 Now, Mr. Lindemann wants to make the argument of
19 let's try this in front of a judge. I have no problem
20 with that, but then, again, I do not believe that this
21 court, basically -- and that's in your purview and your
22 discretion -- basically, should have deviated from the
23 earlier statutory -- or earlier court cases that have been
24 in place regarding breach of contract claims ever since
25 Connors vs. Forest Acres came into existence. The Supreme

1 Court primarily said you have a right to a jury if there's
2 a handbook and if that handbook, first of all, does not
3 have a disclaimer.

4 Second of all, when we move forward from Connors vs.
5 Forest Acres and we get into the Shady Hall case over in
6 North Augusta that Judge Michelle Childs entertained,
7 after we look at Hessenthaler, which is a national federal
8 case, all of those cases give the plaintiff the right to
9 try their case in front of a jury. In fact, those cases
10 were tried in front of juries.

11 We believe that -- and we filed that and we have --
12 on the four corners of the paper, our pleadings were very
13 well specific and our relief requested on the four corners
14 of the paper was that she have a trial by her peers. To
15 deny her that right -- and we understand that that's
16 risky. We understand that a jury may rule against her,
17 but she does have that inherent right.

18 And I think the Court is correct, too, when you talk
19 about the 7th Amendment, she has a right to a trial by
20 jury. And if we buy Mr. Lindemann's argument, then no
21 plaintiff would ever have a right to have a jury of her
22 peers listen to her case. We believe that he is factually
23 and legally inaccurate in trying to invoke the statute
24 that dates back to the 1800s to get a trial by jury.
25 That's our position, sir.

1 THE COURT: Thank you both. I hope I'm not subjected
2 to the 8th Amendment, cruel and unusual punishment, of
3 your arguments today, gentlemen.

4 Any response to Mr. Gist?

5 MR. LINDEMANN: Real quick.

6 THE COURT: We can move on.

7 MR. LINDEMANN: Real quickly, Your Honor. The cases
8 that he has cited to you, with the exception of Connors
9 did not involve a governmental entity. And, of course,
10 the Unisys case is dealing with a governmental entity
11 only.

12 Hessenthaler, which was not a federal case, was
13 actually a state case was against Tri-County Sister
14 Health, Incorporated. The Shady Hall case that he cited
15 from North Augusta was against the Family YMCA of Greater
16 Augusta. So, obviously, Unisys doesn't apply to those
17 entities.

18 Unisys -- and, of course, Unisys came down in 2001
19 and the Supreme Court, again, I mean, it's very clear --
20 and I'm not relying on a statute from 1868. The reasoning
21 of the Supreme Court in Unisys is that if the right to a
22 jury trial didn't exist for a cause of action in 1868,
23 there is no right to a jury trial.

24 And very clearly, they're talking -- and it starts
25 off by saying Unisys claims under this provision, meaning

1 Article 1, section 14, it is entitled to a jury trial on
2 this controversy within the state. And then it goes on to
3 say exactly what I just read to Your Honor earlier, the
4 right to a jury trial does not apply to actions against
5 the sovereign that were not recognized in 1868.

6 So it's really that simple. I'm not arguing to the
7 court that nobody will ever be able to get a jury trial on
8 a breach of contract claim. That's not what I'm arguing
9 at all, but against a sovereign, against a governmental
10 agency, they can't. And simply because cases may have
11 been tried in front of a jury before, if nobody made the
12 argument --

13 THE COURT: Well, let me ask you this question, some
14 of these cases you cited, was the defendant a governmental
15 entity?

16 MR. GIST: Yes.

17 MR. LINDEMANN: Richland County is the defendant.

18 THE COURT: So that's my simple question. Any of
19 these cases that was cited --

20 Let me finish Mr. Gist. Thank you, sir.

21 Was the defendant a governmental entity?

22 MR. LINDEMANN: In any of the cases he just cited?

23 THE COURT: Yes.

24 MR. LINDEMANN: Yes, the City of Forest Acres --

25 THE COURT: Stop, please. I just wanted to ask,

1 that's all.

2 Anything further?

3 MR. LINDEMANN: I don't think that case actually got
4 tried.

5 THE COURT: That's fine. I just wanted to ask that
6 question. Thank you, sir.

7 MR. GIST: May I respond?

8 THE COURT: Sure. Go ahead.

9 MR. GIST: He keeps citing Unisys. That's a 2001
10 case.

11 THE COURT: Okay.

12 MR. GIST: Connors vs. the City of Forest Acres is a
13 2002 case, 2002.

14 THE COURT: I'm assuming the City of Forest Acres is
15 a governmental entity.

16 MR. GIST: And the City of Forest Acres is a
17 governmental entity.

18 THE COURT: Okay. Both of y'all relax.

19 Let's move onto your motion for summary judgment.

20 MR. LINDEMANN: All right. Thank you, Your Honor.

21 THE COURT: That's all right.

22 MR. LINDEMANN: Your Honor, as I indicated, the
23 plaintiff, Ms. Pearson, was an employee of Richland
24 County. She worked as an Accountant II and got promoted
25 to Senior Accountant, worked initially within the Finance

1 Department and then within the Transportation Department
2 at Richland County.

3 Ultimately, during her tenure -- she was hired in
4 2017. At the time of the lawsuit, she was still employed.
5 As I indicated to you earlier, she resigned a couple of
6 months ago well after this litigation was filed in 2019.
7 And there hasn't been any type of change to the pleadings.
8 She brought causes of action we've already discussed,
9 breach of contract, promissory estoppel and a
10 whistleblower claim.

11 She contends that she was, essentially, harassed by
12 her immediate supervisor, an individual named Michael
13 Niermier, who for a period of time was the Director of the
14 Transportation Department, as well as two individuals in
15 the Finance Department, including the Finance Director and
16 Assistant Finance Director.

17 She claims that she made complaints regarding
18 particularly Mr. Niermier. There was an incident where he
19 made a racial comment in front of a group of people --

20 THE COURT: Something about the zoo; is that right?

21 MR. LINDEMANN: Right.

22 THE COURT: Go ahead.

23 MR. LINDEMANN: Exactly. And, ultimately, she had
24 additional problems. She testified that she never had any
25 type of racial issues with him other than that. And,

1 quite frankly, Your Honor, just so the Court is clear,
2 they didn't bring any federal claims. They didn't bring a
3 hostile work environment claim. They didn't bring a race
4 discrimination claim, gender discrimination.

5 In fact, she testified -- and I put that testimony in
6 the record, that she never filed a claim or complaint or
7 charge with the EEOC or with South Carolina Human Affairs.

8 THE COURT: At some point, she exhausted her
9 remedies?

10 MR. LINDEMANN: Well, yeah, right, exactly. And that
11 primarily goes to the whistleblower, but the main point
12 I'm trying to make here is a lot of what she's complaining
13 about sounds in, basically, a hostile work environment
14 claim.

15 We don't have a state hostile work environment claim.
16 You bring that by bringing a charge and then, ultimately,
17 bringing a federal claim. But that has not been done in
18 this particular case. So we're in State Court on a
19 handbook claim, promissory estoppel, whistle blower.

20 Ultimately, Your Honor, we believe that her claims
21 fail on each of those causes of action. First of all, as
22 far as the breach of contract claim, the handbook itself,
23 Your Honor -- first of all, she has admitted numerous
24 times in her deposition that she was an at-will employee.

25 She recognized that she was an at-will employee. We

1 put into evidence, Your Honor, the letter that she
2 received when she was hired that indicated she was an
3 at-will employee and she understood that.

4 She testified numerous times, as I indicated, in her
5 deposition that she was an at-will employee. In fact, on
6 Page 30, I said, "Ms. Pearson, you were hired as an
7 at-will employee, correct?"

8 "Yes, sir."

9 "And you've remained as an at-will employee
10 throughout your entire tenure with Richland County,
11 correct?"

12 "Yes, sir."

13 So there's no question about that. There was a
14 disclaimer within the handbook itself. There was a
15 signature page that she signed. It's attached as Exhibit
16 No. 3 to her deposition. She signed it on the day that
17 she received the handbook.

18 One of the things she acknowledges is "I understand
19 the handbook is not a contract of employment." She also
20 indicated that -- the disclaimer also indicates that
21 employees of the county are employed at will. She knew
22 that.

23 She also testified in her deposition -- and, again,
24 those excerpts are before the Court, that she read the
25 disclaimer. She read the entire handbook before she sent

1 it.

2 In fact, on Page 35 of her deposition, I said, "Is
3 that your signature?"

4 "Yes, sir."

5 "Did you read this disclaimer before you signed it?"

6 "Yes, sir."

7 "It shows a date of January 23rd, 2017; is that
8 correct?"

9 And she said, "Yes, sir. That is the date I received
10 that employee handbook during orientation. We read it
11 thoroughly, and we had to sign it on that date." So she
12 volunteered that she had read it thoroughly without me even
13 asking her that.

14 So, ultimately, Your Honor, two issues, both of them
15 are preclusive of their claim on breach of contract
16 independent of one another. Number one, there is a
17 disclaimer that meets the requirements of the disclaimer
18 in South Carolina.

19 The -- not the entire handbook, but the portions of
20 the handbook that are relevant are Plaintiff's Exhibit No.
21 5, which is attached to our motion. And it shows on the
22 very first page, you've got the cover page, then you've
23 got the first page.

24 It says "not a contract" in bold print underlined in
25 a different size font. And, again, there's no question,

1 she knew that, and she was well aware of it. So because
2 of the disclaimer, Your Honor, under state statute, she
3 has no claim for breach of contract.

4 Separate and apart from that, even if the case was
5 not properly disclaimed, the handbook wasn't properly
6 disclaimed, the case law indicates that there has to be
7 some mandatory promise that she's contending is the basis
8 for her breach of contract claim.

9 In her complaint, she doesn't really spell out
10 exactly what she's challenging. It looks like it's the
11 retaliation provision. And, Your Honor, if you look at
12 the retaliation provision, it's in a section called
13 employee relations. It is -- beg the Court's indulgence.

14 THE COURT: All right.

15 (Pause.)

16 MR. LINDEMANN: It simply states this, Your Honor.
17 It says, No employee, supervisor, department head may
18 retaliate against any individual because such individual
19 has opposed or recorded any unlawful act or practice.

20 It goes on, basically, stating, you know, we're not
21 tolerating retaliation. It's a pretty standard
22 anti-retaliation clause. It does not make any type of
23 mandatory promises. It doesn't guarantee that there will
24 be no retaliation. It just addresses that a policy --
25 it's a policy statement that retaliation is something

1 that, you know, employees should not engage in.

2 There's also similar provisions for harassment. And,
3 again, it's not clear from the complaint whether that's
4 what they're basing it on, but from some questions during
5 discovery, I'm throwing that out for what it's worth. And
6 then there's also the equal employment opportunity section
7 that was touched on at times by plaintiff's counsel during
8 discovery.

9 All of those, Your Honor, are policy statements.
10 They don't contain any type of mandatory promises. And
11 we've cited a number of cases, including the Hessenthaler
12 vs. Tri-County Sister Health case, as well, as several
13 federal cases that have addressed handbook law under South
14 Carolina.

15 A decision by Judge Gergel and a decision by Judge
16 Howell and a decision by Judge Wooten on Page 7 of our
17 memorandum all talking about how generalized harassment or
18 anti-retaliation or anti-discrimination policies in a
19 handbook do not give rise to an implied contract.

20 They are simply policy statements that are ultimately
21 not actionable for breach of contract. So those are two
22 independent grounds for summary judgment on the breach of
23 contract claim based entirely on the plaintiff's own
24 undisputed testimony.

25 Second of all, Your Honor, on the promissory estoppel

1 cause of action, the elements of a promissory estoppel
2 case -- and, in fact, Your Honor, there was a decision
3 from the South Carolina Court of Appeals that came down
4 yesterday, which -- called Crews vs. City of Columbia
5 which addresses promissory estoppel in quite some detail.
6 And the elements of a promissory estoppel claim, as we've
7 laid out in our memorandum, Your Honor, required
8 unambiguous promise, first of all. It requires a reliance
9 on that unambiguous promise and it's foreseeable that
10 there will be reliance on that unambiguous promise.

11 We don't have any allegations or proof of that in
12 this particular case. Best I can tell from the complaint
13 is they're relying again on this retaliation provision in
14 the contract as being the unambiguous promise.

15 Well, there's no promise that it will never be
16 subjected to retaliation. Retaliation is not something
17 that we want our employees to engage in. That's not some
18 type of strict liability that creates a promise that will
19 never ever happen.

20 And so, ultimately, Your Honor, they have not stated
21 the bases or the grounds or met the elements, I should
22 say, for a promissory estoppel claim.

23 The second argument that we've raised on promissory
24 estoppel is one that it's an equitable claim. As an
25 equitable claim, it's barred by sovereign immunity. This

1 is an argument I've made several times in different
2 courts.

3 THE COURT: How many times have you been successful
4 with those arguments? Every time?

5 MR. LINDEMANN: Have I been successful with it every
6 time?

7 THE COURT: Yeah. You said you've made this argument
8 several times --

9 MR. LINDEMANN: I have.

10 THE COURT: -- in front of different courts. How
11 many times have you been successful?

12 MR. LINDEMANN: I can hand up to the court right
13 here --

14 THE COURT: My question is every time, some of the
15 times, or all of the time?

16 MR. LINDEMANN: I don't think I've lost that issue,
17 Your Honor. I'm not 100 percent.

18 THE COURT: I'll read your stuff. I'll read it.

19 MR. LINDEMANN: I know it's an interesting wrinkle,
20 but if you follow the reasoning in Murphy vs. Richland
21 Memorial Hospital back in 1986, sovereign immunity got
22 absolutely reinstated after McCall V. Batson, and then it
23 was waived with certain limitations. And it was never
24 waived for any type of equitable claim. It just never
25 was.

1 And we do cite some case law from North Carolina
2 where that is also helpful in that regard, but -- and I
3 did actually come prepared to show the Court that, you
4 know, I'm not crazy. I'm not just making this up.

5 THE COURT: I'll take judicial notice that you're
6 not.

7 MR. LINDEMANN: I have actually prevailed on this
8 particular issue, Your Honor. I'll give you a couple of
9 copies.

10 THE COURT: Well, parenthetically, did your son
11 graduate yet?

12 MR. LINDEMANN: He did, yes, sir.

13 There was a decision from --

14 MR. GIST: Can I have a copy?

15 MR. LINDEMANN: I'm giving you one right now have.
16 The Shirley's Iron Works case, Your Honor, is a case from
17 Justice Few when he was still Judge Few back in 2007.
18 That dealt with a quantum meruit claim as opposed to
19 promissory estoppel, but, obviously, an equitable claim,
20 and found that, Your Honor, it was barred by sovereign
21 immunity under the exact same analysis that I'm
22 providing --

23 THE COURT: But Justice Few went to Duke, didn't he?

24 MR. LINDEMANN: He did go to Duke, that is true.

25 Then I've got a more recent case from 2020, Fields

1 vs. Richland County where Judge Jocelyn Newman filed --

2 THE COURT: Well, she went to Duke, too, didn't she?

3 MR. LINDEMANN: I don't know where she went.

4 THE COURT: She did. Go ahead.

5 MR. LINDEMANN: So this is a Duke thing. Judge Dixon
6 just recently adopted the same rationale for me in another
7 case. I don't know where he went.

8 THE COURT: He went to Carolina.

9 MR. LINDEMANN: Okay. I can get the Court --

10 THE COURT: Okay. Thank you.

11 MR. LINDEMANN: That's in the road maintenance
12 litigation.

13 THE COURT: All right.

14 MR. LINDEMANN: But, anyway, just to summarize that
15 real quick. I mean, bottom line is waiver of sovereign
16 immunity must be explicitly stated as our supreme court
17 and United States Supreme Court has said. What happened
18 in response to McCall V. Batson, it's all spelled out, as
19 I said, very well by the Supreme Court in the Murphy vs.
20 Richland County case.

21 The Supreme Court indicates that sovereign immunity
22 -- in fact, they say in response to our decision in
23 McCall, legislature implemented a comprehensive act
24 providing for the logical disposition of governmental
25 liability.

1 The act first completely restores sovereign
2 immunity. The act then provides specific waivers and
3 limitations on actions against governmental entities.
4 Well, there's never been, Your Honor, a waiver on any
5 claims in equity seeking money damages.

6 And the argument, and this argument has been made
7 many times, you can find cases where promissory estoppel
8 was brought against a governmental entity. In fact, in
9 candor, the case yesterday that I'm talking about is Crews
10 vs. City of Columbia. It was not decided on sovereign
11 immunity. Sovereign immunity wasn't raised. And as Your
12 Honor well knows, sovereign immunity is an affirmative
13 defense.

14 So if the governmental entity didn't raise it, you
15 can't read an opinion like this and suggest that it
16 doesn't apply. There's no case that actually addresses
17 sovereign immunity in a promissory estoppel or equitable
18 claim that says it doesn't apply. And the reasoning I
19 would submit to the court is rock solid.

20 I mean, under Murphy, sovereign immunity got
21 reinstated and it never got waived. And there's no
22 statute where the South Carolina General Assembly waived
23 sovereign immunity for government for any type of
24 equitable claim.

25 So we have that additional argument. Your Honor,

1 probably doesn't need to reach that argument because they
2 haven't shown the elements of a promissory estoppel case
3 here. In fact, as I indicated, they argued the exact same
4 anti-retaliation provision from the handbook itself.

5 And then lastly, Your Honor -- and I apologize this
6 is taking so long, but the whistleblower claim --

7 THE COURT: I don't have to go to Charleston, but go
8 ahead.

9 MR. LINDEMANN: Under the whistleblower claim, Your
10 Honor, specifically, built in this statute there's the
11 requirement, there are two prerequisites other than --
12 that will be brought within one year. It says, 8-27-30,
13 subsection (A) says, quote, No action may be brought under
14 this chapter unless one, the employer has exhausted all
15 available grievance or other administrative remedies. And
16 two, any previous proceedings have resulted in a finding
17 that the employee would not have been disciplined but for
18 reporting the alleged wrongdoing.

19 In this particular case, Your Honor, we believe what
20 Ms. Pearson is claiming doesn't even meet the definition
21 of wrongdoing and there's no whistle blower action. But
22 in spite of that, Your Honor, she clearly hasn't met these
23 two prerequisites to bring the case. She has not
24 exhausted all her administrative remedies.

25 She admits in her testimony that she never brought a

1 proceeding before the Richland County Employee Grievance
2 Board Committee. So, clearly, she hasn't fully exhausted
3 those grievance rights.

4 And number two, Your Honor, there is definitely no
5 previous proceeding that resulted in a finding that she
6 would not have been disciplined but for any reporting of
7 any alleged wrongdoing. There's absolutely no evidence of
8 that.

9 And it's their burden, as the Seago case says, it's
10 their burden to be able to prove that as a prerequisite to
11 bringing their claim. So, Your Honor, we believe the
12 plaintiffs are not able to support their whistleblower
13 claim.

14 The last point applies to all of these causes of
15 action. Ms. Pearson testified in her deposition that she
16 never brought a Workers' Compensation claim. The only
17 damages that are -- or injuries that are being claimed in
18 this case are medical or emotional harm on Page 105 of
19 her --

20 THE COURT: Emotional distress?

21 MR. LINDEMANN: Right. There are things that are
22 clearly covered by the Workers' Compensation Act. There's
23 no non-pecuniary -- I mean, nonmedical time damages.
24 There's no procuring the loss that she's claiming.

25 I asked her on Page 105 of her deposition, "So you

1 have lost no income as a result of any type of retaliation
2 that you're claiming, correct?"

3 And she says, "I have not lost any income."

4 So there is no particular claim here, Your Honor, for
5 anything other than bodily injury. And as Your Honor well
6 knows, bodily injury is recoverable against your employer
7 in only one instance and that's through a Workers' Comp.
8 proceeding. So we rely, as well, on the Workers' Comp.
9 exclusivity doctrine as to all of these claims because the
10 damages being claimed are only recoverable under the
11 worker's compensation act. She had the ability to file
12 such a claim and she did not and she concedes that she
13 never filed such a claim.

14 THE COURT: Thank you, Ms. Lindemann.

15 Mr. Gist?

16 MR. GIST: Okay. He brought the barnyard and the
17 chickens, too. In terms of his argument, I want to
18 address each one of his argument. The breach of contract
19 claim first and then the other causes that we filed.

20 THE COURT: All right, sir.

21 MR. GIST: Specifically, I think Mr. Lindemann in his
22 own testimony substantiates our right to bring the breach
23 of contract claim. If you remember his testimony before
24 the court here, he indicates that the county government --

25 THE COURT: Well, it needs to be argument, not

1 testimony.

2 MR. GIST: His argument. His argument. He argues
3 that there is a handbook. He does admit there's a
4 handbook policy. He admits that the handbook policy says
5 we will not retaliate -- we will not tolerate. The word
6 tolerate is a mandatory promise. Whether you were
7 speaking establish, French, tolerate, will not tolerate is
8 a mandatory promise.

9 The court primarily also has addressed these issues.
10 I tried -- like he has, I had plenty of arguments on the
11 motion for summary judgment as I did with the Shady Hall
12 case, as I did with some of the other cases in State
13 Court.

14 When we had Connors, Connors said, essentially, that
15 a handbook could be -- a contract could be created out of
16 a handbook if it didn't have a disclaimer.

17 We moved forward from Connors and we move up into
18 Fleming and we move all the way into Hessenthaler. If
19 there is an ambiguous handbook utterance or a claim, even
20 in the face of a disclaimer that says we will not
21 tolerate, his own words, tolerate, we prohibit, those are
22 mandatory promises that would cause an employee to rely
23 upon those promises.

24 Here's what really happened in this case, okay. In
25 2019, Ms. Pearson was a supervisor. She was a supervisor

1 in the penny tax program. Michael Niermier comes on
2 board, from his own deposition testimony, in 2019.

3 When he comes on board, he holds a staff meeting, and
4 when he holds that staff meeting, he literally says, "I'm
5 here. I know the crew from the zoo has been here a long
6 time, but it's a new day."

7 Well, the crew-from-the-zoo statement that he made,
8 there was I think nine African Americans in that room and
9 maybe one or two -- I think nine African Americans, maybe
10 one Caucasian. All of them filed complaints. All of them
11 filed complaints with Richland County because they
12 believed that his statement directly related to the
13 handbook was an inappropriate, unwelcomed slur.

14 They did not have to -- Mr. Lindemann argues that
15 well, she didn't elect to go to the Human Affairs
16 Commission. She didn't elect to go to the EEOC. It's not
17 a Title 7 case. Very specifically, it's not a Title 7
18 case because the slur that was uttered was an offensive
19 slur under their handbook policy.

20 Second of all, it wasn't a Title 7 case because there
21 were Caucasians who were also in that room that were upset
22 about the slur. So it wasn't racially intended, but it
23 did violate the handbook provision of Richland County. We
24 will not tolerate disparaging remarks. We will not
25 tolerate remarks that humiliate people.

1 So she exhausted -- he makes the argument she didn't
2 exhaust her administrative remedies. She exhausted her
3 administrative remedies. In fact, the day it was uttered,
4 she filed a complaint with Mr. Niermier and told him it
5 was unwelcomed. So did several other employees. He did
6 nothing.

7 She then went to Mr. Niermier's supervisor, Dr. John
8 Thompson, who did nothing. She went up through the chain
9 to the county administrator. That's what the handbook
10 policy says.

11 It does not say -- because at that point, she had not
12 been terminated. She had not been suspended, she had not
13 been terminated. The only way that you get to a grievance
14 committee in the county is if you have had some adverse
15 action that results in your separation from employment, a
16 demotion or a suspension. They complained within the
17 framework of the handbook that said they had that right.

18 Right after she made that complaint in June of 2019,
19 Niermier moves her from her supervisory role and places
20 her in another division under a lady named Crystal Hill.
21 And Crystal Hill then continues to take retaliatory action
22 at Niermier's direction, because they're buddies, against
23 Ms. Pearson.

24 What was the retaliatory action? Writing her up.
25 What was the retaliatory action? Calling into question

1 her paperwork. What was really going on in this whole
2 time period? What was going on is that the county was
3 under assault from the Department of Revenue and it was
4 under assault from some of our legislative delegation
5 about improper expenditures involving the penny tax money.
6 That's the very program she worked at. She was an
7 advocate.

8 After she got no relief -- and I'm going to go ahead
9 and address the other issue as it relates to the -- first
10 of all, after she got no relief, she went to Senator Dick
11 Harpootlian, who is a state governmental official.

12 She complained externally. She met the criteria for
13 the whistleblower. After she complained, there was a
14 department of -- that was another round of investigations.
15 She didn't have to go through the county grievance
16 procedure because the handbook says your way of moving up.

17 Now, if he wants to make that argument, there was a
18 similar case primarily that Judge -- I don't know if it
19 was Judge Newman heard by Mr. Lindemann that said -- I
20 represented another lady in the case, which, basically,
21 said -- another Richland County employee that --

22 THE COURT: Judge Newman, was that the good Newman or
23 the bad Newman.

24 MR. GIST: I'll let you say that, but at the end of
25 the day, Your Honor, there's well established law in South

1 Carolina that when there is a handbook and there's
2 ambiguity with respect to -- and I'll cite this, Fleming
3 vs. Boykin, an employee manual that contains promissory
4 language and a disclaimer is inherently ambiguous and the
5 jury should interpret whether the manual creates or alters
6 an existing contractual relationship. That's a 1994
7 case. Okay. We also go back and we cited a 2017 case,
8 which was the Shady Hall vs. Family YMCA case, July 25th
9 of 2017.

10 Now, he talks about the Crews case. Well, the Crews
11 case primarily helps us. It doesn't help him. The Crews
12 case says very much the same thing, that if there's an
13 unambiguous -- it must be unambiguous. We're arguing that
14 this was ambiguous. And our position is that Crews, just
15 decided in the last couple of days, that Crews really
16 works in our favor.

17 We believe that he fails in his argument they had a
18 breach of contract claim dismissed. We believe that it's
19 clear that there was a disclaimer. We believe that it's
20 clear to know that there were mandatory promises
21 throughout the process. Not only in terms of policies
22 about we will not tolerate -- we will not tolerate
23 disparaging remarks, but there were also other promises
24 made. We are an equal employment employer. We,
25 basically, promote an environment that is free of

1 harassment. That's a close temporary proximity between
2 the complaint she made in 2019 about the crew in the zoo
3 and other employees that are witnesses that should go to a
4 jury and her being moved out of her position in 2019.

5 Ms. Pearson continued to work up until a few months
6 ago, maybe a month or so ago with Richland County, but she
7 got another job. She got that other job because of the
8 fact that she was still under tremendous pressure from the
9 administration over there because she went outside the
10 scope of the -- and talked to Dick Harpootlian, who's a
11 witness of ours.

12 She testifies in her deposition. He didn't take Dick
13 Harpootlian's deposition. We know why. But we intend to
14 bring Mr. Harpootlian as a witness. So at the end of the
15 day, we believe that his breach of contract claim fails,
16 but also his whistleblower.

17 Let me address the whistleblower claim. He says she
18 didn't exhaust her administrative remedies. We believe
19 he's very mistaken in that. Here, plaintiff did, in fact,
20 exhaust her administrative remedies. Plaintiff appealed
21 to Mr. Niermier, then Mr. Dwight Hannah to Dr. John
22 Thompson. But these grievances were not followed through.
23 And, in fact, Mr. Niermier and assistant Allison Fields
24 continually disregarded the proper procedures in terms of
25 how they spend this money.

1 There was an issue and we cite that in her
2 deposition, okay. In her deposition, we cite -- that
3 Mr. Lindemann took, in plaintiff's deposition on Page 66,
4 Lines 19 through 22. Okay.

5 Plaintiff also made a report of wrongdoing. As
6 plaintiff states in her deposition, it was for the
7 Harrison Road project. At that time, we had approximately
8 a little over \$8,700 on the budget line and he asked me to
9 set up a requisition. And the finding on the contract
10 that was bid was not in the budget. The \$10 million was
11 not currently on the budget line at that time.

12 "He asked me to approximate that purchase requisition
13 on behalf of the Department." Here, plaintiff provides a
14 specific example of Mr. Niermier's failure to account for
15 appropriate funding on the budget line, which plaintiff
16 explains would eventually hold up invoices from payment
17 due to the lack of funds, Plaintiff's deposition Page 815.

18 A reasonable jury can, in fact, come to a
19 determination as to whether or not these were improper
20 expenditures. They were. You can't bid out a project and
21 the money is not there to do the bid. She complained.
22 When she complained to the county officials, they did
23 nothing to Niermier.

24 I took Mr. Niermier's deposition a couple weeks ago.
25 "Mr. Niermier, did you understand that you were violating

1 policy with respect to the procedures?"

2 "Yes."

3 "Did anybody do anything to punish you?"

4 "No."

5 "Were you ever suspended?"

6 "No."

7 "Was your office ever reassigned?"

8 "No."

9 "Were your duties ever taken away from you like they
10 were taken away from Ms. Pearson?"

11 "No."

12 I took Dr. John Thompson's deposition. "Dr.
13 Thompson, did Mr. Niermier follow policy?"

14 "No."

15 "Dr. Thompson, did you do anything to reprimand Mr.
16 Niermier?"

17 "No."

18 "Dr. Thompson, where is Mr. Niermier now? Does he
19 still work for Richland County Government?"

20 "No."

21 "Why does he not work for Richland County
22 Government?"

23 "Because he was terminated."

24 For the very same things. He wouldn't elaborate, but
25 he was terminated for not performing his job properly.

1 All of these raised reasonable inferences of genuine
2 issues of material fact that should go to a jury as it
3 relates to the whistleblower claim.

4 With respect to the doctrine of sovereign immunity
5 that he addressed -- maybe I should have my colleague,
6 Erica --

7 THE COURT: Beg your pardon?

8 MR. GIST: I said maybe I should have my client -- I
9 mean, my colleague, Erica, here, Ms. McRay, to address the
10 sovereign immunity issue better.

11 Give me a minute. Begging the Court's indulgence.

12 (Pause).

13 THE COURT: Since you both are here, I only have 149
14 days to go.

15 MR. GIST: Yes, sir, I understand, and you don't have
16 to go to Charleston today.

17 THE COURT: Take your time.

18 MR. GIST: Clearly, there's nothing in South Carolina
19 code annotated 15-78-65, 2020, it does not -- it does,
20 however, provide -- it does not, however, provide immunity
21 from liability.

22 Nothing in this chapter may be construed to give an
23 employee of a governmental entity immunity from suit or
24 liability if it is proved the employee's conduct was not
25 within the scope of his official duties or that constitute

1 act of fraud, act of malice, intent to harm or a crime
2 involving moral turpitude. In terms of what constitutes
3 conduct within the scope of his official duties, I think
4 the court knows and I won't waste your time with that.

5 But here, defendant through Niermier, who was acting
6 outside the scope of their official duties when ordering
7 these requisitions for which there was no funding in
8 violation of state law and defendant's policies.

9 Niermier further continued to retaliate against
10 plaintiff when he reassigned her to Chris Hall in the
11 fines department. The defendant in this case is not
12 protected by the Tort Claims Act.

13 Additionally, even if you went argumental in this
14 where the defendants of color, go to the case of Small
15 (phonetic) vs. South Carolina State University, mere room
16 -- and in this case, it says, Mere room for discretion on
17 the part of the entity is not sufficient to invoke the
18 discretionary immunity provision. Discretionary immunity
19 is contingent on proof the governmental entity, faced with
20 alternatives, which they had here, actually weighed
21 competing considerations and made a conscious choice using
22 accepted professional standards.

23 In Small, the Court found no evidence the defendants
24 had considered Small's complaints or their veracity. As a
25 matter of fact, they refused, as in Ms. Pearson's case, to

1 discipline Small's supervisor or offer Small deference in
2 their decisions.

3 Similarly, the defendants in the present case have
4 failed to adequately consider plaintiff's claims or look
5 further into actual inconsistencies. A reasonable jury
6 could find as in Small that the defendant did not waive
7 competing considerations at the time the decision was
8 made.

9 Defendants have said because of genuine issues of
10 material fact exist regarding whether the defendant
11 properly waived competing considerations and were entitled
12 to a qualified immunity under the South Carolina Tort
13 Claims Act summary judgment in this case is inappropriate.
14 Factual inquiry should be submitted to a jury.

15 Mr. Lindemann doesn't want it to go to a jury because
16 he doesn't want the facts in this case to be fleshed out
17 in front of a jury. Our position is that one, there is
18 existing legitimate issues of material fact on the breach
19 of contract, legitimate issues with respect to the issue
20 of sovereign immunity, legitimate issue --

21 Also, I want to go back and address his other
22 argument on the issue of Workers' Compensation. What
23 constitutes the Workers' Compensation violation? The lady
24 still -- as I said earlier, she's still under counseling.
25 She did not file a Workers' Comp. claim, but at the same

1 time, she put the County on notice, filed the appropriate
2 medical paperwork with the county.

3 She didn't file a Form 50 with the Workers' Comp.
4 Commission, but she filed a claim with the county. She
5 told them that she was suffering emotional distress from
6 the harassment. In fact, she actually goes out on leave
7 for a period of about 60 days primarily because of the
8 emotional distress.

9 She ultimately quits her job a couple of months ago
10 as -- really, less than two months ago because of the
11 emotional distress from the continuing harassment. What
12 we're saying is that yeah, she may come back now.

13 She's still within the proper statutory timeframe and
14 file a Workers' Comp. claim because of the fact she gave
15 up her job two months ago. But what we're saying is that
16 the act in the Workers' Compensation statute doesn't say
17 that. It says if you file a claim with your employer,
18 you're not supposed to be retaliated against. They
19 retaliated against her up to and through the time of her
20 termination.

21 Your Honor, I've made our point. We briefed this
22 case. We believe we are solid on all aspects of the case
23 with respect to the causes of action that we brought.
24 Thank you.

25 THE COURT: Thank you, Mr. Gist.

1 Mr. Lindemann.

2 MR. LINDEMANN: Thank you, Your Honor. Just several
3 points, and let me sort of work backwards. The
4 testimony -- and I just read it to you -- she didn't file
5 any Workers' Compensation claim. He didn't refute that
6 there's no economic or pecuniary loss here, purely
7 emotional harm. That's covered by Workers' Comp.

8 Whether she can still timely file a claim or not,
9 that's not before this Court and not something I would
10 even comment on. The bottom line is that is the exclusive
11 remedy for any type of bodily injury, which would include
12 emotional harm that arises in the course and scope of the
13 employment, that's what you have here. That disposes of
14 this entire case very neatly.

15 And going back then to the sovereign immunity issue,
16 Your Honor, it's totally misunderstood, with all due
17 respect to my opponents. I haven't raised the Tort Claims
18 Act nor could I raise the Tort Claims Act. There's no
19 tort that's been alleged here. You won't find the Tort
20 Claims Act in my brief. You won't find it in my answer.

21 What I am asserting is that as the Murphy case spells
22 out from the Supreme Court in response to McCall V.
23 Batson, the General Assembly reenacted sovereign immunity
24 across the board.

25 It was to get rid of what the Supreme Court said in

1 McCall was scattered patchwork of liability. Because
2 there was certain things where there was liability before
3 McCall V. Batson, primarily, something like road cases and
4 car accidents.

5 But the bottom line is the General Assembly then
6 waived sovereign immunity with certain limitations for
7 torts. This is not a tort. Tort Claims Act doesn't apply
8 to that.

9 What I'm arguing is for promissory estoppel, it's an
10 equitable cause of action and sovereign immunity was never
11 waived for equitable claims. I've handed two Circuit
12 Court decisions. I know you're not bound by those,
13 obviously, but it just shows that other judges have agreed
14 with the exact logic and reasoning I put before the Court.

15 THE COURT: Anything further?

16 MR. LINDEMANN: Just a couple of real quick points,
17 Your Honor. He cited two depositions, which are not
18 before the court. Mr. Thompson's deposition wasn't
19 submitted, Mr. Niermier's. He didn't quote pages or
20 anything. I don't know --

21 THE COURT: Was his deposition taken?

22 MR. LINDEMANN: Oh, yeah, they were taken. They were
23 taken.

24 THE COURT: Remember, gentlemen, this is nonjury. Go
25 ahead.

1 MR. LINDEMANN: Yes. But as far as the grievance
2 goes, Your Honor, the plaintiff herself -- just again, I'm
3 relying on the plaintiff's own uncontested testimony --

4 THE COURT: Have I heard this before?

5 MR. LINDEMANN: You've heard one section of it.

6 THE COURT: Go ahead.

7 MR. LINDEMANN: I wanted to show you a different
8 place in her deposition. On page 110, which is not what
9 I --

10 THE COURT: Okay.

11 MR. LINDEMANN: -- mentioned to you earlier, the
12 plaintiff -- what she's claiming in this particular case,
13 she's not claiming any type of constructive discharge.

14 As I said, she was employed up until a couple of
15 months ago. There's been no attempt to change this case
16 since then. Ultimately, she claims that the adverse
17 action that was taken against her was a demotion. And the
18 demotion, she admits, never resulted in a change in pay,
19 benefits, job duties, other than very minor duties. It
20 was simply who was her supervisor. And, quite frankly,
21 Your Honor, that was done to get Mr. Niermier away from
22 being her supervisor and let her be supervised by somebody
23 else. She considered that a, quote, type of demotion as
24 she put in her testimony. That's the adverse employment
25 situation.

1 But then I asked her, I said -- and this is Page 110
2 of her deposition, but the actual employment decision, the
3 reassignment, basically, of your supervision to the
4 Finance Department, that's not something you actually
5 grieved? No, sir.

6 So, obviously, that's not something you took all the
7 way to the employee grievance committee since you never
8 grieved it to start with; is that a fair statement? And
9 her answer was, Correct.

10 So everything that Mr. Gist is saying here is not
11 supported by his own client's testimony. She did not
12 exhaust her administrative remedies. She didn't even
13 grieve the adverse employment action that she claims
14 resulted from the retaliation that she's claiming.

15 She never grieved it to anybody, let alone all the
16 way through the process to the employee grievance
17 committee. So as far as the whistle blower claim goes,
18 they haven't proven that first prerequisite.

19 And you haven't even heard any argument on the second
20 prerequisite. There's never been any finding whatsoever
21 that she wouldn't have received what she considers an
22 adverse employment action, which it's not, but this quote,
23 unquote demotion based upon a find that what she reported
24 regarding the way certain purchase orders were processed
25 was correct and resulted in her demotion.

1 So the whistleblower claims are very difficult to
2 bring. I mean, there was an amendment to the
3 whistleblower act to put in these prerequisites and they
4 didn't even come close to meeting those two prerequisites,
5 Your Honor.

6 And, finally, as far as the breach of contract claim
7 goes, Your Honor, again, simply based on the fact of
8 disclaimer alone, that takes care of the breach of
9 contract claim, even if there are mandatory promises. And
10 to the extent I used the word tolerate, I can't rewrite or
11 restate the retaliation provision, Your Honor. The
12 retaliation provision is what it is, which is what is
13 contained in the materials that -- in the supporting
14 documents.

15 Basically, what it says is -- just to set the record
16 straight on that since Mr. Gist was trying to use my words
17 as a replacement. It says, No employee supervisor
18 department head may retaliate against any individual, and
19 then goes on. It didn't say anything about tolerate. So
20 if I used those terms, I certainly used them incorrectly.
21 But the provision is what governs here.

22 But as I indicated, you don't even have to get to
23 whether or not there are mandatory promises because there
24 was a disclaimer. She knew she was an at-will employee.
25 She admitted she was an at-will employee. She signed the

1 disclaimer and there was a disclaimer on the cover and
2 under --

3 THE COURT: Stop. Apparently, you're very religious
4 because you all believe in punishment after death. I
5 think I've heard these arguments already and I'm not --

6 MR. LINDEMANN: Thank you.

7 THE COURT: Anything further, Mr. Gist?

8 MR. GIST: Just that he's misquoting the
9 whistleblower claim, Your Honor.

10 THE COURT: Stop, both of you. Let me help you out.
11 Y'all take your time. Relax a little bit.

12 I'm going to give you plenty of time to submit
13 proposed orders. If you left anything out today, I'll let
14 you add them, exchange them. How many days do y'all need?
15 I'll give you've plenty of time.

16 MR. LINDEMANN: Fifteen, 20.

17 THE COURT: Okay. Whatever it is, I'm going to make
18 it as easy for you as I possibly can.

19 MR. GIST: Twenty. I'm going on vacation.

20 THE COURT: Stop, relax. Don't talk me out of it,
21 Mr. Gist.

22 MR. GIST: Okay.

23 THE COURT: I'm going to do a Form 4. Twenty days to
24 submit proposed orders. If either of you gentlemen run
25 into any issues with anything, let me know. Remind me to

1 send Judge Newman a thank you note for giving me this case
2 in the first place.

3 Have a good day. Good to see you both.

4 MR. GIST: Thank you, Your Honor.

5 (Whereupon, the proceedings were concluded.)
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CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

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March 2, 2023

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant Richland County certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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