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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.

BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in ruling that the Respondent Alicia Pearson is entitled to a trial by jury on her breach of contract claim against a governmental entity?

STATEMENT OF THE CASE

This is an employment action. The Respondent Alicia Pearson was formerly employed by the Appellant Richland County. She alleges a claim for breach of contract based on provisions of the County's employee handbook as well as claims for promissory estoppel and for a violation of the South Carolina Whistleblower Act, S.C. Code Ann. § 8-27-10, *et seq.*, both of which are related to her employment.

The Appellant Richland County filed a Motion to Transfer Case to Non-Jury Docket. (R. 29-31). That motion was heard by Circuit Court Judge L. Casey Manning on August 4, 2022. On September 28, 2022, Judge Manning issued an order granting in part and denying in part the Motion to Transfer Case to Non-Jury Docket. (R. 1-5). He concluded that Pearson was not entitled to a trial by jury on the promissory estoppel and Whistleblower Act claims. Judge Manning also ruled, however, that Pearson was entitled to a trial by jury on her breach of contract claim.

The Appellant Richland County filed an immediate appeal from the adverse ruling on the mode of trial issue.[1]

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[1] South Carolina law is clear that "[o]rders affecting the mode of trial affect a substantial right as defined in section 14-3-330(2) of the South Carolina Code (1976), and must, therefore, be appealed immediately." *Frampton v. South Carolina Dept. of Transportation*, 406 S.C. 377, 752 S.E.2d 269, 274 (Ct. App. 2013). Most importantly, "the failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue." *Id. See also*, *Pelfrey v. Bank of Greer*, 270 S.C. 691, 244 S.E.2d 315 (1978) (holding that an order denying a compulsory reference affects the mode of trial and is immediately appealable); *Foggie v. CSX Transportation, Inc.*, 313 S.C. 98, 431 S.E.2d 587, 591 (1993) ("[i]ssues regarding mode of trial

STANDARD OF REVIEW

As the Supreme Court has held, "[w]hether a party is entitled to a jury trial is a question of law." *Verenes v. Alvanos*, 387 S.C. 11, 690 S.E.2d 771, 772 (2010). The standard of review for questions of law is *de novo*. The appellate court "may reverse where the decision is affected by any error of law." *Murphy v. Owens Corning*, 393 S.C. 77, 710 S.E.2d 454, 457 (Ct. App. 2011). The appellate courts are "free to decide matters of law with no particular deference to the fact finder." *Id*.

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must be raised in the trial court at the first opportunity, and the order of the trial judge is immediately appealable").

ARGUMENTS

In her Complaint, the Respondent Alicia Pearson alleges causes of action for breach of contract, for promissory estoppel, and for a violation of the South Carolina Whistleblower Act. The Appellant Richland County filed a Motion to Transfer Case to Non-Jury Docket contending that each of those three causes of action should be tried non-jury. (R. 29-31).

As the First Cause of Action, Pearson alleges a breach of contract cause of action and makes a request for a trial by jury. There is, however, no right to a jury trial for the breach of contract action under the holding of the South Carolina Supreme Court in *Unisys Corp. v. South Carolina Budget & Control Board*, 346 S.C. 158, 551 S.E.2d 263 (2001). In the *Unisys* case, 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 1868 constitution was adopted. Specifically, the Supreme Court explained 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." 551 S.E.2d at 271. The Supreme Court expressly recognized that "at the time our constitution was adopted in 1868, the State was immune from suit on a contract." *Id*. 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*. It is the County's position that the breach of contract cause of action asserted by Pearson in this action was not

recognized and could not be pursued against the State or any governmental entities at the time of the adoption of the constitution in 1868. Accordingly, as dictated by the *Unisys* decision, Pearson's breach of contract claim should be tried non-jury.

The trial court, however, did not agree with that analysis. The County contends on appeal that the trial court erred in ruling that the breach of contract cause of action should be tried by a jury. As to the other two causes of action, the trial court agreed that those sound in equity and must be tried non-jury.[2] As a result, the trial court essentially bifurcated the action and granted the motion transferring Pearson's Second and Third Causes of Action to the non-jury docket, while ruling that the breach of contract claim should remain on the jury docket to be tried by a jury.

In its Order, the trial court erroneously described the issue as follows:

> Whether Plaintiff is entitled to 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.

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[2] It is well settled that 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, Pearson'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 Supreme Court confirmed that "South Carolina courts have consistently characterized promissory estoppel as an equitable claim." 844 S.E.2d at 384. Accordingly, Pearson is not entitled to a trial by jury on her promissory estoppel claim. Lastly, Pearson's Third Cause of Action is brought pursuant to the South Carolina Whistleblower Act. 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).

(R. 3-4).[3] In so ruling, the trial court erred in looking at whether a breach of contract action against a governmental entity is barred by sovereign immunity *in the present day* and in the context of this case rather than at the time of the adoption of the Constitution in 1868. The relevant inquiry concerns the status of the law in 1868. As the Supreme Court explained in *Unisys*, "[a]t the time our constitution was adopted in 1868, the State was immune from suit on a contract." *Unisys*, 551 S.E.2d at 271. *See also*, *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578, 584 (2000) (recognizing that in 1934 "the State was protected by total sovereign immunity and could only be sued in tort or in contract when the State consented").

Yet, the trial court chose to look at whether Richland County is entitled to sovereign immunity on Pearson's breach of contract claim in 2022. That was not the proper inquiry. Whether or not the County is entitled to sovereign immunity today is not relevant to nor does it control whether Pearson is entitled to a trial by jury on her breach of contract claim. Again, the Supreme Court in *Unisys* clearly found that a governmental entity enjoyed total sovereign immunity in 1868, and as a result, Pearson does not enjoy a constitutional right to a jury trial on her breach of contract claim against Richland County.

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[3] The trial court also erred in affirmatively finding that "the state is liable for suit on Plaintiff's Breach of contract claim," if that is the meaning of that language, since Pearson never moved for summary judgment and the trial court denied summary judgment for the County on the breach of contract claim. The denial of summary judgment to the County "decides nothing about the merits of the case." *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379, 380 (1994). "The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings." *Id*.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant Richland County respectfully requests that the Court reverse in part the order of the trial court and remand with directions that the Respondent is not entitled to a trial by jury on any of her three causes of action, including her breach of contract claim.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellant certifies that the Final Brief of Appellant complies with Rule 211(b), SCACR.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant certifies that the Final Brief of Appellant 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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