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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely
Circuit Court Judge

Appellate Case No.: 2022-001332

Andrew Pampu, ……Appellant-Respondent,

v.

Erin Wingo, David Wingo, and Colin J. Gahagan……..……. Respondents-Appellants.

APPELLANT-RESPONDENT'S REPLY BRIEF TO RESPONDENT-APPELLANT COLIN GAHAGAN

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I. Pampu Presented Sufficient Evidence To Sustain A Finding Of Liability For Civil Conspiracy

Pampu's civil conspiracy claim against Gahagan is based on Gahagan's and Erin Wingo's callous and malicious effort to have Pampu removed from Clemson. To establish a claim for civil conspiracy, a plaintiff must prove: "(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." *Paradis v. Charleston Cty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021). As the trial record shows, Pampu presented sufficient evidence to support each element of civil conspiracy, and the Circuit Court erred in overturning the jury's verdict.

A. A Combination Or Agreement Between Wingo And Gahagan

Gahagan argues that while the evidence confirms that Gahagan and Wingo wanted Pampu removed from Clemson, there was no agreement to undertake an unlawful act or lawful act by unlawful means to accomplish this. Gahagan Opp. at 2-3. "[T]o establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Pridgen v. Ward*, 391 S.C. 238, 246, 705 S.E.2d 58, 63 (Ct. App. 2010) (internal quotations and citation omitted). Civil conspiracy "may be inferred from the nature of the acts committed, the relationship of the parties, the interests of the alleged conspirators, and other relevant circumstances." *Id*. (internal quotations and citation omitted). In *Pridgen*, the relationship of the appellants and the nature of the acts they committed served as evidence of a conspiracy. *Id*. at 247, 705 S.E.2d at 63. The Court also noted that the Appellants had a motive to harm Pridgen. *Id*.

It is undisputed that at the time of Pampu's and Wingo's sexual encounter, Wingo and Gahagan were in a romantic relationship. Trial Transcript at 93:21-25; 293:15-17; 418:10-12, 19-21; 499:18-500:5.[1] (R. __). After Wingo and Pampu kissed in September 2015, Gahagan was "furious," so when Wingo had sex with Pampu on October 24, 2015, she knew that it would likely end her relationship with Gahagan. Plaintiff's Trial Exhibit 7 at Wingo ESI 000135; *see also* Trial Transcript at 109:15-21; 317:1-15; 684:2-685:20-25; 736:10-17; 736:18-25; 738:1-13; 839:16-840:8; 862:18-25. (R. __). Indeed, in the immediate aftermath of the sexual encounter, Wingo was only concerned with how her sexual encounter with Pampu might ruin her chances at a more serious relationship with Gahagan. Trial Transcript at 109:15-21; 317:1-15; 684:2-685:20-25; 736:10-17; 736:18-25; 738:1-13; 839:16-840:8; 862:18-25. (R. __). At the same time, Gahagan was publicly humiliated because Pampu's and Wingo's sexual encounter was publicized in the fraternity GroupMe chat by another frat member without Pampu's knowledge or consent. *See* Trial Transcript at 858:18-24. (R. __). Gahagan confronted Wingo in her dorm room after her encounter with Pampu became public knowledge. Trial Transcript at 333:2-10; 429:18-22. (R. __). In an attempt to save their relationship and avoid public humiliation, Wingo and Gahagan developed a false narrative painting Pampu as a rapist. Plaintiff's Trial Exhibit 6; Trial Transcript at 110:14-17; 330:11-13; 332:21-25; 492:9-14. (R. __).

Gahagan's claim that "Wingo was extremely drunk at the time of the incident, to the point she lacked a clear memory of what had occurred" is not supported by the evidence. Gahagan Opp. at 2. Although Gahagan was not present when the sexual acts occurred, the evidence shows that

[1] Moreover, the Gahagan Opp. does not include a statement of the case. Accordingly, Gahagan is bound by the matters stated in Pampu's statement of the case. SCAR 208(b)(2) ("If a respondent does not include his own statement of the case, he shall be bound by the matters stated or alleged in appellant's statement of the case").

Gahagan knew Wingo was not incapacitated at the party prior to her encounter with Pampu and that Wingo consented to sexual intercourse with Pampu. *See* Trial Transcript at 424:8-426:22; Defendant's Trial Exhibit 5; Plaintiff's Trial Exhibit 10. (R. __). At trial, Gahagan testified that, prior to her sexual encounter with Pampu, he observed Wingo walking unassisted without stumbling, had a conversation with Wingo where she was not slurring her words, did not observe Wingo vomit, and was not concerned about Wingo or her level of intoxication when he left her at the party. Trial Transcript at 424:8-426:22. (R. __). Additionally, Wingo's communications on the morning of October 25, 2015, show that she recalled her sexual encounter with Pampu and was only concerned with making sure Gahagan did not find out about it. *See* Plaintiff's Trial Exhibit 6 (Wingo text to Pampu stating "do not tell [Gahagan] what happened," in reference to their sexual encounter the night before); Trial Transcript at 332:11-15; 715:7-14; 713:20-22; 714:12-24 (testimony detailing Jami Hafner's and Wingo's conversation on the morning of October 25, 2015, in which Wingo expressed that she was upset because she had sex with Pampu instead of Gahagan the prior evening and did not say that Pampu raped or sexually assaulted her). (R. __). After Pampu and Gahagan spoke on October 27, 2015, Gahagan concluded that "[h]earing [Pampu's] side of the story definitely made [Gahagan] feel like [Pampu is] not a criminal." Plaintiff's Trial Exhibit 10. (R. __). However, after the plan to have Pampu removed from Clemson was hatched, Gahagan told Wingo, "I want you to press criminal charges on [Pampu]." Trial Transcript at 433:23-434:2.

On November 16, 2015, while the Clemson disciplinary process was ongoing, Gahagan told Wingo that they were "One step closer to him being gone," referring to having Pampu removed from Clemson. Trial Transcript at 459:10-460:1; Plaintiff's Trial Exhibit 16 at CJG_0000299. (R. __). Gahagan also told Wingo, "Well you have four chances in the school to

get what you want. Then you have criminal. Unless you decide criminal sooner is the best option." Plaintiff's Trial Exhibit 16 at CJG_0000301. (R. __). During their conversation, Wingo told Gahagan, "[H]alf of me wants to have him expelled and throw his ass in jail, and half of me wants to hide, right now the northern in me is coming out and I'm ready to hit him with a lawsuit." Plaintiff's Trial Exhibit 16 at CJG_0000301. (R. __). Gahagan later told Wingo, in reference to Pampu, "There's no way this kid can stay at this school. It's honestly impossible." Plaintiff's Trial Exhibit 16 at CJG_0000303; Trial Transcript at 461:10-12. (R. __). Gahagan further explained to Wingo, "He's gone Erin. It's not gonna be possible for him to stay," once again referring to Pampu. Plaintiff's Trial Exhibit 16 at CJG_0000303; Trial Transcript at 461:16-19. (R. __).

Based on the foregoing, it is clear that there was at least some evidence to support the jury's finding that Wingo and Gahagan entered into an agreement to have Pampu removed from Clemson. Thus, the Circuit Court's decision to overturn the jury's verdicts was improper. *See Pridgen*, 391 S.C. at 248, 705 S.E.2d at 64 (upholding denial of directed verdict and JNOV motions where "there was at least some evidence" to support the finding); *see also Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000) ("The jury's verdict **will not be overturned if any evidence exists that sustains the factual findings** implicit in its decision.") (emphasis added).

B. An Unlawful Act Or A Lawful Act By Unlawful Means

Although Gahagan argues that there was no unlawful act or lawful act by unlawful means, he fails to address Pampu's arguments that Gahagan's and Wingo's actions constituted tortious interference with a contract and incorrectly argues there was no agreement to commit an unlawful act or a lawful act by unlawful means. *See* Gahagan Opp. at 3-4 (asserting that testifying during the OCES hearing is not an unlawful act). As noted above and detailed extensively in Pampu's

Initial Brief, Gahagan and Wingo agreed to act together to remove Pampu from Clemson. Because their plan was successful, their actions constituted tortious interference with a contract. "The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages." *Vortex Sports & Ent., Inc. v. Ware*, 378 S.C. 197, 206, 662 S.E.2d 444, 449 (Ct. App. 2008). A civil wrong constitutes an "unlawful act" for the purposes of evaluating a cause of action for civil conspiracy. *Paradis*, 433 S.C. at 571, n.6, 861 S.E.2d at 778, n.6. As described below, the evidence presented at trial was sufficient to satisfy the elements of tortious interference with a contract. Thus, there was no basis for the Circuit Court to disturb the jury's determination that Wingo and Gahagan committed an unlawful act. *Pridgen*, 391 S.C. at 248, 705 S.E.2d at 64; *Welch*, 342 S.C. at 300, 536 S.E.2d at 419.

At the time Gahagan and Wingo formulated and executed their plan to get Pampu removed from Clemson, Pampu had a contract with Clemson – if he paid tuition and complied with Clemson's academic and disciplinary policies, then he would remain enrolled as a student. *See Carter v. Univ. of S.C.*, 360 S.C. 428, 432, n.4, 602 S.E.2d 59, 61, n.4 (Ct. App. 2004) (noting that "[i]t is commonly held that a contract exists between a university and its students" and that "[i]t is axiomatic that when a student enrolls in a college or university, pays his tuition and fees, and attends such school, the resulting relationship may reasonably be construed as being contractual in nature") (internal quotations and citation omitted). Because Gahagan and Wingo knew that Pampu was enrolled as a student at Clemson and they, too, were students at Clemson, Gahagan and Wingo were aware of the existence of the contract that existed between Pampu and Clemson as they were concocting their scheme.

As outlined above, Gahagan's and Wingo's goal was to remove Pampu from Clemson. Plaintiff's Trial Exhibit 16 at CJG_0000299, CJG_0000301, CJG_0000303; *see also* Section I.A,

supra. (R. __). They were successful in achieving this goal by affirmatively lying during the OCES process. Trial Transcript at 119:2-3; 124:6-11; 249:7-14, 24-25; Plaintiff's Trial Exhibit 14. (R. __). Thus, it is clear that they intentionally procured the breach of the contract that Pampu had with Clemson.

Both Wingo and Gahagan provided statements to Clemson that they knew were false in order to procure the breach, thus satisfying the absence of justification prong. Trial Transcript at 451:5-6; 451:12-13, 16; 452:1-2; 451:19-22; Plaintiff's Trial Exhibit 14. (R. __). Finally, Pampu was clearly damaged, as the unwarranted interference with his contract caused him economic loss. As explained in more detail below, Pampu presented expert testimony establishing that the breach of his contract with Clemson caused by Wingo and Gahagan prevented him from becoming an orthodontist, resulting in a severe reduction in lifetime earnings. Trial Transcript at 602:4-6; 602:8-603:2; 603:22-604:4; 622:3-7; 663:12-18; *see also* Section I.D, *infra*. (R. __).

The aforementioned actions constitute an unlawful act for the purposes of determining whether Wingo and Gahagan are liable for civil conspiracy. Because the jury heard testimony and reviewed exhibits indicative of Wingo's and Gahagan's tortious interference with the contract that existed between Pampu and Clemson, there was absolutely no basis for overturning the jury's verdicts on this issue. *See Welch*, 342 S.C. at 300, 536 S.E.2d at 419 ("The jury's verdict **will not be overturned if any evidence exists that sustains the factual findings** implicit in its decision.") (emphasis added).

C. The Commission Of An Overt Act In Furtherance Of The Agreement

Gahagan's and Wingo's lies during the OCES process constitute overt acts in furtherance of their agreement to get Pampu removed from Clemson, and Gahagan's arguments to the contrary are merely attempts to muddy the waters. Gahagan Opp. at 4-6. On January 14, 2017, Gahagan

sent a series of text messages to Pampu admitting Pampu was innocent of Clemson's sexual misconduct charge and admitting to providing false testimony at the OCES hearing board:

> You're innocent. I lied in that hearing. Erin wanted to have sex that night. Get your brothers away from me and never touch your life again and I'll come through with the truth that she lied.
>
> I deleted texts from that night to prove she was fucking crazy. You're innocent. Just pull your fucking boys off me and never touch me again. It's sad that you were like a brother to me and this happened. You were innocent.
>
> Send these to your lawyer. Just don't call me into the hearing and leave me alone. You're welcome. That's all I ask. you're innocent bud.

Trial Tr. at 451:4-22; Plaintiff's Trial Exhibit 14. (R. __). Gahagan's attempts to cast doubt on the meaning of these texts fall short. Gahagan Opp. at 4. Gahagan argues that the January 14, 2017 texts do not indicate what Gahagan lied about during the hearing. Gahagan Opp. at 4. He makes this argument despite the fact that he literally told Pampu, "I lied in that hearing." Trial Tr. at 451:4-9; Plaintiff's Trial Exhibit 14. (R. __). However, throughout the texts, Gahagan makes it clear that his lies were in furtherance of Wingo's and Gahagan's civil conspiracy to get Pampu removed from Clemson by spreading the false narrative that Wingo did not consent to sexual intercourse with Pampu on October 25, 2015. Gahagan admits that he intentionally lied during the hearing, that he knew Wingo consented to the sexual encounter, and that he deleted texts from the night that would have helped Pampu's defense. Trial Tr. at 451:4-22; Plaintiff's Trial Exhibit 14. (R. __).

Additionally, Gahagan incorrectly argues that without proof of an overt act by Gahagan, there could be no liability for civil conspiracy. Gahagan Opp. at 5. However, "each conspirator is liable for all damages naturally resulting from any wrongful act of a co-conspirator in exercising the joint enterprise." *Paradis*, 433 S.C. at 567, 861 S.E.2d at 776 (internal quotations and citation omitted). Wingo knew she was not incapacitated at the time she consented to sexual intercourse

with Pampu. *See* Plaintiff's Trial Exhibit 6; Trial Transcript at 332:11-15; 715:7-14; 713:20-22; 714:12-24. (R. __). Regardless of who initiated the process, Wingo provided false information and otherwise misled OCES in furtherance of the civil conspiracy. Trial Transcript at 384:10-11; Plaintiff's Trial Exhibit 14. (R. __). Although Gahagan argues he was just one of several witnesses in the OCES process, it is hard to believe that OCES would proceed with an investigation and hearing unless Wingo feigned incapacitation and claimed Pampu was a rapist. *See* Gahagan Opp. at 4-5 (downplaying Gahagan's involvement in the OCES process). Additionally, it is reasonable for the jury to conclude that without testimony from Wingo or Gahagan falsely establishing that Wingo was incapacitated during sexual intercourse, Pampu would not have been found responsible for violating Clemson's policies.

i. The Intrinsic Versus Extrinsic Fraud Dichotomy Is Inapplicable

The intrinsic versus extrinsic fraud dichotomy argued by Gahagan is inapplicable here and Pampu's civil conspiracy claim is not barred. *See* Gahagan Opp. at 5-6 (arguing Wingo's and Gahagan's lies constitute intrinsic fraud). Relief is appropriate in the case of extrinsic fraud because extrinsic fraud prevents a party from fully exhibiting and trying their case, so there has never been a real contest before the court on the subject matter of the action. *Ray v. Ray*, 374 S.C. 79, 84, 647 S.E.2d 237, 240 (2007); *Gainey v. Gainey*, 382 S.C. 414, 425, 675 S.E.2d 792, 798 (Ct. App. 2009). Relief from a judgment obtained through intrinsic fraud is improper because the party alleging intrinsic fraud should have discovered the fraud during the litigation itself. *Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004).

This intrinsic versus extrinsic fraud rationale does not translate to the student discipline setting because the discovery devices that allow litigants to uncover intrinsic fraud are entirely lacking in the student discipline setting. Ordinarily, litigants have a wide range of discovery tools

and procedural safeguards available to them. Armed with these tools, skilled litigators should be able to uncover and counteract any intrinsic fraud during the life of the case itself. By contrast, the OCES process provided no discovery tools to Pampu — Pampu did not have the power to depose witnesses or subpoena testimony and documents from witnesses. Clemson University Student Code of Conduct at Sections D-G. (R. __). Additionally, witnesses that were interviewed by OCES or who participated in the hearing did not provide testimony under penalty of perjury. Clemson University Student Code of Conduct at Sections F.3.e. (R. __). Pampu also lacked the ability to conduct a direct cross-examination of the witnesses. Clemson University Student Code of Conduct at Sections F.3.f. (R. __).

Without the basic discovery tools available to civil litigants, Pampu could not, for example, obtain Wingo's and Gahagan's communications to establish that the two were engaged in a coordinated effort to defraud the OCES process, let alone learn that Gahagan had deleted texts that supported Pampu's defense. Trial Tr. at 451:4-22; Plaintiff's Trial Exhibit 14 (Gahagan admitting to deleting exculpatory text messages). (R. __). Even classic examples of intrinsic fraud, such as perjured testimony, cannot be discovered by parties to the OCES process. Accordingly, the distinction between intrinsic and extrinsic fraud is meaningless in the school disciplinary setting, and Pampu's civil conspiracy claim is not barred. *See Ray*, 374 S.C. at 85, 647 S.E.2d at 240 (judgment could be challenged based on the concealment of assets through a third-party "*not subject to discovery*") (emphasis added).

ii. Even If The Intrinsic Versus Extrinsic Fraud Dichotomy Applied, Gahagan's Intentional Scheme To Defraud OCES Constitutes Extrinsic Fraud

"Extrinsic fraud is 'fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.'" *Raby Constr., L.L.P.* 358 S.C. at 19, 594 S.E.2d at 483. "Intrinsic fraud, on the other hand, is fraud which misleads a court in determining issues and induces the

court to find for the party perpetrating the fraud." *Id.* "Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." *Gainey*, 382 S.C. at 425, 675 S.E.2d at 798. "The essential distinction between intrinsic and extrinsic fraud is the ability to discover the fraud." *Ray*, 374 S.C. at 84, 647 S.E.2d at 239. When there is an act of perjury or concealment of a document coupled with an intentional scheme to defraud the court, courts are justified in setting aside a judgment due to extrinsic fraud. *Id*. at 86, 647 S.E.2d at 241 (2007).

In *Ray*, the appellant initiated an action for fraud upon the court and an independent action in equity arising from the respondent's deliberate concealment of $130,000 until after the marital property had been divided. *Id*. at 82, 647 S.E.2d at 238. Prior to the divorce, the respondent entered into an agreement to sell a pharmacy she owned jointly with her husband; she also entered into a separate non-compete agreement with the purchaser of the pharmacy in exchange for $130,000. *Id*. at 82, 647 S.E.2d at 239. The respondent made arrangements with CVS to receive payment after the divorce was finalized, and deliberately concealed the agreement in response to discovery requests and during depositions. *Id*. Ultimately, the Supreme Court of South Carolina held that the deliberate concealment of a marital asset constituted extrinsic fraud where the concealment was part of a deliberate scheme to defraud the court. *Id*. at 86, 647 S.E.2d at 241. In so holding, the Court reasoned that "concealing assets through an unknown third-party not subject to discovery is extrinsic fraud in that it constitutes conduct or activities outside of the court proceedings which deprive the other party of the opportunity to fully exhibit and try his case." *Id*. at 85, 647 S.E.2d at 240.

Gahagan relies on *Rycroft v. Tanguay*, 279 S.C. 76, 302 S.E.2d 327 (1983) to argue that his perjury constitutes intrinsic fraud and therefore, Pampu cannot collect damages stemming from Pampu's removal from Clemson University. Gahagan Opp. at 5-6. However, *Rycroft* involved a civil court case that was entitled to *res judicata* effect, not a student disciplinary hearing. *Rycroft*, 279 S.C. at 77, 302 S.E.2d at 328. Additionally, the bank records at issue in *Rycroft* were not requested by the defendant until the night before the hearing. *Id*. The fact that the plaintiff did not produce the records the next morning was not fraudulent, and the Master in Equity held that the defendant's motion for continuance was untimely. *Id*. at 77-78, 302 S.E.2d at 328. Plaintiff did not appeal the Master's decision, accepted all payments due under the Master's report, and did not appeal the order dismissing the action. *Id*. at 79, 302 S.E.2d at 329. Rather than being the result of fraud, it was the defendant's lack of diligence that led to the unfavorable decision. *Id*.

By contrast, here, Gahagan sent a series of text messages to Pampu admitting that Pampu was innocent of Clemson's sexual misconduct charge and admitting to providing false testimony at the OCES hearing board. Trial Tr. at 451:4-22; Plaintiff's Trial Exhibit 14. (R. __). Gahagan admits that he intentionally lied during the hearing, that he knew Wingo consented to the sexual encounter, and that he deleted texts from the night that would have helped Pampu's defense. Trial Tr. at 451:4-22; Plaintiff's Trial Exhibit 14. (R. __). Gahagan's admissions also demonstrate that Wingo intentionally provided false testimony during the OCES process. Trial Tr. at 451:4-22; Plaintiff's Trial Exhibit 14. (R. __). The fact that Wingo lied during the OCES process is further supported by the evidence showing Wingo was not incapacitated at the party, was fully aware of her actions the following morning, and her only concern in the immediate aftermath was what Gahagan would do if he found out she had sex with Pampu. Plaintiff's Trial Exhibit 6; Trial Transcript at 332:11-15; 715:7-14; 713:20-22; 714:12-24. (R. __). Gahagan's and Wingo's texts,

outlined above, help establish that Gahagan and Wingo lied to further their scheme to get Pampu removed from Clemson. *See* Section I.A, *supra*.

Like the wife in *Ray*, Gahagan and Wingo engaged in a deliberate scheme to defraud OCES. *See Ray*, 374 S.C. at 85, 647 S.E.2d at 240. Additionally, neither Gahagan nor Wingo was subject to discovery during the Title IX process. Indeed, during the OCES process, lawyers were not allowed to actively participate in the hearing; testimony was not provided under oath; the presentation of evidence was heavily restricted; direct cross-examination was not permitted; witnesses could not be compelled to appear; parties and witnesses could not be compelled to produce documents or other evidence; there was no right to a jury trial, there was no public record, the rules of evidence did not apply, and the case was investigated, prosecuted, and decided by agents of the same party, namely Clemson University. Clemson University Student Code of Conduct at Sections D-G. (R. __). Because Pampu did not have any of the discovery tools or procedural safeguards available to civil litigants, Pampu was wholly reliant on and had no way to challenge what Wingo and Gahagan voluntarily produced to OCES during the process and was thus unable to discover the fraud perpetrated during the OCES process. *See* Clemson University Student Code of Conduct at Sections D-G. (R. __). As a result of Gahagan's and Wingo's fraud, Pampu did not have "the opportunity to fully exhibit and try his case" at Clemson. *Ray*, 374 S.C. at 84, 647 S.E.2d at 240. In this lawsuit, where Pampu had the benefit of pre-trial discovery in this matter, he was able to fully present his case, and the jury unanimously found in his favor and awarded millions of dollars in damages. Trial Transcript at 977:8-12, 16-22; 977:25-978:2. (R. __).

D. Damages Proximately Resulting To Pampu

While Gahagan downplays the impact his and Wingo's false testimony played in the OCES process, Pampu could not have been found responsible for violating Clemson's policies without testimony from Wingo or Gahagan falsely establishing that Wingo was incapacitated during sexual intercourse. *See* Gahagan Opp. at 4-5 (downplaying Gahagan's role in the OCES process). Because Wingo and Gahagan were successful in getting Pampu wrongfully removed from Clemson, Pampu was unable to become an orthodontist, and there has been a severe reduction in his lifetime earning capacity. Trial Transcript at 602:4-6; 602:8-603:2; 603:22-604:4; 622:3-7; 663:12-18. (R. __). Pampu testified that, at the time of trial, his base salary as a sales representative was $72,000 per year. Trial Transcript at 271:21-22. (R. __). Pampu's expert witness, Steven Shedlin, testified that even as a successful sales representative, Pampu can expect to earn significantly less over the course of his lifetime than what he could have earned as an orthodontist. Trial Transcript at 622:3-7. (R. __).

Gahagan attempts to distinguish *Whisenant* by citing the definitions of "economic damages" and "noneconomic damages" in South Carolina Code § 15-32-210, and claiming, without authority, that economic damages "often have a standard or formula which can be utilized to more clearly determine the extent of the loss." Gahagan Opp. at 7. Under South Carolina Appellate Court Rule 208(b)(1)(E), Gahagan's argument must be supported by citations of authority. Rule 208(b)(1)(E), SCACR. By failing to cite any authority to support this argument, Gahagan has abandoned the issue. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) ("Appellant fails to provide arguments or supporting authority for his assertion. Thus, he is deemed to have abandoned this issue"). Regardless, even if economic damages "*often*" have a standard or formula to assist in quantifying damages, the Supreme Court of South Carolina

has clearly stated that "proof with mathematical certainty of the amount of loss or damage **is not required**" in order for damages to be recoverable. *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981) (emphasis added). Indeed, in *Mills v. South Carolina State Ports Authority*, 435 S.C. 213, 865 S.E.2d 910 (Ct. App. 2021), the Court held that in the absence of documentation regarding a plaintiff's lost income, a jury is "free to accept or reject his testimony aabout his earnings and draw other reasonable inferences from that testimony." *Mills* 435 S.C. at 230, 865 S.E.2d at 918. In *Mills*, the plaintiff failed to provide tax returns or evidence of his salary. *Id*. at 221-222, 865 S.E.2d at 914. However, the jury was capable of determining the plaintiff's approximate pay within a reasonable degree of certainty, as well as calculating lost wages caused by the injury in question, based solely on the plaintiff's testimony that he was unable to maintain a regular work schedule due to the injury and "that he lost about $12,000 during the nine weeks he was out of work." *Id*. at 228-229, 865 S.E.2d at 918. Here, the jury heard testimony directly from Pampu that he earns $72,000 per year, as well as testimony from Shedlin that even as a successful sales representative, Pampu can expect to earn significantly less over the course of his lifetime than what he could have earned as an orthodontist. Trial Tr. at 271:21-22; 622:3-12. (R. __). Thus, the jury had sufficient grounds for awarding monetary damages associated with the civil conspiracy.

Gahagan goes on to argue that "expert witnesses are *often* utilized to assist the jury in determining the extent of a particular loss," and that without testimony from an economist, Pampu failed to prove his damages on the civil conspiracy claim. Gahagan Opp. at 7 (emphasis added). However, Gahagan makes no claim that an expert witness is *required* to prove damages. Gahagan Opp. at 7. Juries are capable of determining damages without an economist providing a mathematical breakdown of a plaintiff's damages. *See Mills*, 435 S.C. at 228-229, 865 S.E.2d at

918 (holding that the jury could determine the plaintiff's "approximate pay within a reasonable degree of certainty" based solely on the plaintiff's testimony). Indeed, "[t]ranslating legal damage into money damages is a matter peculiarly within a jury's ken. Thus, the determination or assessment of the proper amount of damages is a question for the jury although if the amount allowed is inadequate or excessive, the court may interfere." 22 Am. Jur. 2d Damages § 797. The jury was also clearly instructed by the Circuit Court that any award of damages related to Pampu's civil conspiracy claim could not be speculative and must be "fair, just, and reasonable." Trial Transcript at 964:21-965:2. (R. __).

Finally, Gahagan failed to address Pampu's argument that the Circuit Court's ruling that the damages related to Pampu's defamation and civil conspiracy claims are duplicative was erroneous. *See generally* Gahagan Opp. (failing to address duplicative award issue). As stated in Pampu's Initial Brief, his defamation and civil conspiracy claims arose from two separate sets of facts. Pampu Initial Br. at 29-30. Pampu's defamation claim is based on false statements that Wingo and Gahagan made **outside** of the Clemson process, which tarnished his reputation, whereas Pampu's civil conspiracy claim is based on Wingo's and Gahagan's plan to remove Pampu from Clemson by providing false statements during the OCES process, which ultimately caused his removal and lifelong economic damages. Trial Transcript at 128:23-129:7, 339:19-342:25; 345:18-346:9; 347:12-349:18; 350:4-351:13; 435:20-22; 438:2-6; 439:6-8; 440:10-13; 440:16-19; Plaintiff's Trial Exhibit 11 at CJG_0000151; Plaintiff's Trial Exhibit 12; Pampu Opposition to Wingo Post-Trial Motion at 9-11. (R. __). The jury also awarded different amounts of damages for each cause of action, showing that the jury viewed the harm stemming from each cause of action as distinct harms. Trial Transcript at 977:8-978:2. (R. __). Based on the foregoing,

once the jury's civil conspiracy verdicts are restored, Pampu will be entitled to enforce both judgments without electing a remedy.

II. The Circuit Court Improperly Invaded The Province Of The Jury By Granting Respondents-Appellants' JNOV Motion

Gahagan fails to respond to any of the case law or arguments raised in Pampu's Initial Brief regarding whether the Circuit Court improperly invaded the province of the jury by granting Respondents-Appellants' JNOV motion. *See generally* Gahagan Opp. (failing to address the case law and arguments raised on the province of the jury issue). Instead, Gahagan's half-hearted attempt to defend the Circuit Court's improper reversal of the unanimous jury verdicts is nothing more than a conclusory statement that the Circuit Court followed Rule 50(b) of the South Carolina Rules of Civil Procedure when deciding the JNOV motion. Gahagan Opp. at 8-9. As noted by this Court, "an issue is deemed abandoned on appeal and, therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority." *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106 n.3, 439 S.E.2d 283, 285 n.3 (Ct. App. 1993).

"A motion for JNOV may be granted **only if no reasonable jury** could have reached the challenged verdict," and "[t]he jury's verdict will not be overturned **if any evidence exists that sustains the factual findings** implicit in its decision." *Welch*, 342 S.C. at 300, 536 S.E.2d at 419 (citing *Smalls v. South Carolina Dep't of Educ.*, 339 S.C. 208, 528 S.E.2d 682 (Ct. App.2000)) (emphasis added); *see also Hunter v. Staples*, 335 S.C. 93, 105, 515 S.E.2d 261, 267-268 (Ct. App. 1999) (same); *Watts v. Chastain*, 438 S.C. 597, 603, 885 S.E.2d 398, 401 (Ct. App. 2022) (same). A "motion for a JNOV is merely a renewal of the directed verdict motion," and the same standards apply to determining a JNOV motion and a directed verdict motion. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331-332, 732 S.E.2d 166, 171 (2012). The Circuit Court denied Gahagan's and Wingo's directed verdict motions on the civil conspiracy issue after the close of

evidence and extensive arguments by the parties. Trial Transcript at 870:14-877:19. (R. __). The evidence in the record did not change between the Circuit Court's denial of the directed verdict motions and the JNOV decision. *See* Order on Post-Trial Motions at 2-4. (R. __). Accordingly, the only rational explanation for the Circuit Court's inconsistent determinations is that the Circuit Court improperly based its JNOV decision on its disagreement with the jury's factual findings and credibility determinations. *See RFT Mgmt. Co.*, 399 S.C. at 331, 332, 732 S.E.2d at 171 (noting that a circuit court lacks "the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence" when deciding a JNOV motion). For this reason, the Circuit Court's decision must be reversed, and the jury's verdicts must be reinstated. *Unlimited Servs., Inc. v. Macklen Enterprises, Inc.*, 303 S.C. 384, 386-388, 401 S.E.2d 153, 154-155 (1991). As outlined in Section I, *supra*, Plaintiff presented sufficient evidence at trial to sustain a finding of liability for civil conspiracy, so there was absolutely no basis for overturning the jury's verdicts on this issue. *See Welch*, 342 S.C. at 300, 536 S.E.2d at 419 ("The jury's verdict **will not be overturned if any evidence exists that sustains the factual findings** implicit in its decision.") (emphasis added).

CONCLUSION

For the reasons stated above and in Pampu's Initial Brief, this Court should reverse the ruling of the Circuit Court and reinstate the jury's verdicts for civil conspiracy.

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