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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 RESPONDENTS-APPELLANTS ERIN WINGO AND DAVID WINGO

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PRELIMINARY STATEMENT

Erin Wingo relies on faulty logic, semantic games, improper evidence, and inapposite law in her trifling opposition brief. For the better part of the last decade, Wingo has lived a life detached from reality unable to take responsibility for her actions. Unfortunately, nothing has changed despite twelve unbiased strangers determining that she and her erstwhile boyfriend engaged in abhorrent behavior warranting a multimillion-dollar judgment in Andrew Pampu's favor. Consistent with her behavior throughout this litigation, Wingo's opposition brief shows a fundamental misunderstanding of the facts and law that are relevant to Pampu's civil conspiracy claim. As explained in Pampu's moving brief and reiterated below, the evidence presented to the jury at trial definitively cleared the extremely low bar necessary to defeat Wingo's JNOV motion. In order to correct the Circuit Court's undeniable error, this Court must reinstate the jury's properly-rendered civil conspiracy verdicts.

ARGUMENT

I. PAMPU'S CIVIL CONSPIRACY CLAIM IS FIRMLY GROUNDED IN FACT AND SUPPORTED BY EVIDENCE

Wingo relies almost entirely on documents and testimony that were either (1) properly excluded from evidence at trial or (2) never before the Circuit Court for consideration to incorrectly assert that Pampu's civil conspiracy claim "does not make factual sense and no evidence supports it." Wingo Opp. Br. at 15-19. The rest of her faulty argument consists of pure rhetoric. *Id*. Regardless, Wingo has utterly failed to offer any coherent argument against reinstating the jury's civil conspiracy verdicts.[1] Accordingly, this Court should overturn the Circuit Court's improper decision and restore the jury's findings of liability and damages in Pampu's favor.

[1] Wingo inexplicably chose to split her argument regarding the sufficiency of the evidence presented at trial into two separate sections. Wingo Opp. Br. at 15-28. Section I. of this reply brief dispatches the unsupported assertions included in the first argument section of Wingo's

A. Pampu Was Removed From Clemson

Wingo incorrectly states that "Pampu was never removed from Clemson." Wingo Opp. Br. at 16. This is patently false, as it is undisputed that Pampu was suspended from Clemson. Trial Tr. at 119:2-3; 124:6-11; 249:7-14, 24-25. (R. __). If a student is suspended from a university, he has been disenrolled from and may not attend that university – in other words, he is removed from the university. Indeed, Clemson University's Student Code of Conduct defines "Suspension" as follows:

> The **denial of enrollment, attendance and other privileges** at the University for a specified period of time. Permission to apply for readmission upon the termination of the period may be granted with or without conditions/restrictions. The student must receive clearance for re-enrollment from the Office of Community and Ethical Standards. A student who has been issued a suspension sanction is deemed **"not eligible to return" to the University** during the suspension period.

Clemson Student Code of Conduct at IX. B. 8. (R. __) (emphasis added).[2] Thus, Pampu was completely separated from Clemson and unable to return during the pendency of the suspension. In other words, he was removed from Clemson.

Moreover, Pampu did not admit "that he was permitted to return" to Clemson as Wingo falsely claims. Wingo Opp. Br. at 16. Rather, Wingo's counsel asked Pampu whether Clemson ever told him that he could not return, to which Pampu said, "No," and explained that Clemson set unreasonable conditions that would have prevented any potential return. Trial Tr. at 234:9-17. (R. __). Still, there was no guarantee that Pampu would have been able to return to Clemson even if

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opposition brief. Section II. of this reply brief provides greater detail regarding the more than sufficient evidence that was presented to the jury to support the civil conspiracy verdicts.

[2] Any reference to Clemson documents that were properly excluded from the trial record by the Circuit Court should not be construed as an admission that those documents were admissible evidence. Rather, Pampu is only citing to these documents to respond to Wingo's faulty arguments and her repeated improper reliance on material that was properly deemed inadmissible by the Circuit Court. There is simply no reason for this Court to consider the inadmissible evidence from Clemson's Title IX process or Wingo's baseless arguments related thereto.

he had complied with the conditions set by Clemson that he disagreed with. The language of the Student Code of Conduct clearly gives Clemson the discretion to deny readmission following a suspension. As part of a two-step process, a separated student needs to first obtain permission to even apply for readmission, which may or may not be granted. Clemson Student Code of Conduct at IX. B. 8. (R. __). If this permission is granted, the suspended student must then obtain clearance from Clemson to reenroll, and there is no promise that this clearance will be given. *Id*. (R. __). Regardless, when a student is suspended from Clemson – which can obviously be permanent based on Clemson's own policies – he is completely removed from the university. Wingo's argument that Pampu was never removed from Clemson is completely absurd.[3]

Wingo strangely asserts that "it was impossible for Pampu to establish his civil conspiracy claim because the factual predicate for the claim was not presented to the jury" as a result of the Circuit Court's decision to exclude evidence related to Clemson's Title IX process. Wingo Opp. Brief at 16. She also incorrectly claims that Pampu's "real grievance" is with Clemson's Title IX decision. *Id*. As shown at trial, and detailed extensively in Pampu's Initial Brief, Wingo and Gahagan engaged in a conspiracy to have Pampu removed from Clemson wherein they made false statements to Clemson that ultimately caused Pampu to suffer economic damages as a result of his suspension. *See* Pampu Initial Br. at 17-30 (describing the admissible evidence in the trial record proving Pampu's civil conspiracy claim). Regardless, review of the trial record clearly shows that Wingo's assertion that the jury lacked evidence of Pampu's suspension is patently false. *See*, *e.g.*, Trial Tr. at 119:2-3; 124:6-11; 249:7-14, 24-25; 602:4-6; 602:22-603:6; 663:12-18. (R. __) (referencing Pampu's suspension from Clemson). Pampu was in fact removed from Clemson.

[3] It is unclear why Wingo notes that Pampu transferred before the Clemson Title IX matter was finalized. Wingo Opp. Br. at 16. Pampu's decision to transfer does not change the fact that he was removed from Clemson as a result of Wingo and Gahagan's actions.

B. The Jury Received Evidence Showing That Wingo And Gahagan Lied To Clemson

Wingo baselessly asserts that Pampu cannot establish a civil conspiracy because "there was no evidence before the jury regarding what Ms. Wingo and Mr. Gahagan told Clemson." Wingo Opp. Br. at 16-17. The only citation that Wingo offers to support her untenable claim is from inadmissible proffer testimony given by Clemson administrator Alesia Smith outside the presence of the jury. *Id*.; *see* Trial Tr. at 775:17-19. (R. __). (explaining that Alesia Smith's testimony "is not admissible testimony" and is merely "a proffer"). She relies on this inadmissible evidence to incorrectly assert, "It is impossible to establish that anyone conspired to have Pampu 'removed from Clemson' without providing what was told by them to Clemson." Wingo Opp. Br. at 17. This is nonsense. Pampu introduced evidence showing that Wingo intentionally misled Clemson into believing that she had been raped when she cried uncontrollably during a meeting at the outset of Clemson's investigation even though she previously told Pampu, "Do not tell [Gahagan] what happened," thereby establishing that she remembered the consensual sexual encounter and was not incapacitated. Trial Tr. at 110:14-17; 330:11-13; 384:10-11; Plaintiff's Trial Exhibit 6. (R. __). Pampu presented the jury with text messages from Wingo and Gahagan proving that they were planning on using the Clemson disciplinary process to have Pampu removed from the university. Plaintiff's Trial Exhibit 16. The jury also received evidence showing that Wingo and Gahagan lied during the disciplinary hearing that preceded Pampu's removal. Trial Tr. at 451:5-6, 12-13, 16, 19-21; 452:1-2; Plaintiff's Trial Exhibit 14. (R. __). This evidence is sufficient to support the jury's finding that Wingo and Gahagan conspired to have Pampu removed from Clemson. *See Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000) (explaining that "The jury's verdict will not be overturned **if any evidence exists that sustains the factual findings** implicit in its decision.") (emphasis added). Accordingly, the jury verdicts should be reinstated.

C. Clemson's Decision To Suspend Pampu Was Based On Statements Made By Wingo And Gahagan

Wingo relies solely on inadmissible evidence to incorrectly assert that "there is no indication that statements or comments by Ms. Wingo or Mr. Gahagan led to Pampu's suspension." *See* Wingo Opp. Br. at 17-18 (relying various Clemson documents deemed inadmissible by the Circuit Court and Smith's inadmissible proffer testimony to support this faulty contention). As noted above and explained in greater detail below (as well as in Pampu's Initial Brief), the evidence admitted at trial was sufficient to sustain the factual findings made by the jury. Regardless, even the inadmissible evidence that Wingo relies upon does not support overturning the jury verdicts.

In her inadmissible proffer testimony outside the presence of the jury, Smith stated, "I can't really speak to what the [Clemson Hearing Board] based their decision on. I'm not part of that discussion." Trial Tr. at 782:9-11. (R. __). Even though Smith admitted that she did not know how the Clemson Hearing Board reached its decision, Wingo astonishingly relies on Smith's testimony to baselessly assert, "It is possible, and even probable based on the record, that the decision to suspend Pampu was based on much more than statements by Ms. Wingo and/or Mr. Gahagan." Wingo Opp. Br. at 17. Of course, this claim is pure speculation. Even so, Wingo admits that statements that she and Gahagan made did indeed contribute to Pampu's suspension. *Id*.; *see also Id*. at 18 (admitting that the conspiracy between Wingo and Gahagan contributed to Pampu's suspension from Clemson).[4] Accordingly, she has conceded that the jury's finding on this issue was correct and the Circuit Court's ruling on her JNOV motion should be overturned.

[4] It is unclear what point Wingo is trying to make by citing to the inadmissible testimony from the Clemson Title IX hearing regarding Pampu's understanding of consent; indeed, the testimony indicates she gave verbal consent to intercourse. Wingo Opp. Br. at 18. Moreover, the jury was presented with sufficient evidence to prove that Wingo was not incapacitated when she had consensual sex with Pampu. Trial Tr. at 110:14-17; 330:11-13; 424:18-425:14; 674:9-19; 679:11-21; 682:3-12; 683:3-11; 713:20-22; 714:12-24; Plaintiff's Trial Exhibit 6. (R. __).

Wingo's focus on the inadmissible content of the Clemson Investigative Report is also curious, as the Clemson investigators did not issue any disciplinary findings, making their initial determinations irrelevant. Regardless, the investigators stated that their incorrect determination that Wingo was incapacitated during the sexual encounter was based on, *inter alia*, Wingo's self-reported alcohol intake and state of mind on the night in question. Clemson Investigation Report at 10. (R. __). In other words, the investigators determined Wingo was incapacitated based on Wingo's false claim that she was incapacitated. This is the crux of Pampu's civil conspiracy claim – Wingo and Gahagan offered false statements and representations to Clemson during the disciplinary process in order to have Pampu removed from Clemson.

Wingo asserts – without any supporting citation – that Pampu repeatedly acknowledged to Clemson's investigators and adjudicators that Wingo was incapacitated. Wingo Opp. Br. at 17. This is completely false and a borderline sanctionable claim. Again without offering a supporting citation, Wingo claims that Pampu admitted that Wingo was drunk on multiple occasions. *Id*. at 17-18. Even if there were evidence to support this claim, it would not matter, as a drunk person is not necessarily incapacitated. Once again without a supporting citation, Wingo notes that Pampu told Clemson that Wingo was "on the bad end of being drunk" but conveniently neglects to inform this Court that Pampu was referring to Wingo's behavior ***after*** the consensual sexual encounter. Clemson Investigation Report at 10. (R. __). At trial, Pampu explained that when he made this comment he meant that Wingo was extremely emotional, not incapacitated. Trial Tr. at 184:4-11. (R. __). This is consistent with the instant regret Wingo felt after cheating on Gahagan and her intense fear that all hope of a relationship with Gahagan – which she badly wanted – was lost. Trial Tr. at 109:15-21; 317:1-15; 331:18-19; 684:2-685:20-25; 736:10-17; 736:18-25; 738:1-13;

839:16-840:8; 862:18-25. (R. __). Even when relying on inadmissible evidence, Wingo fails to show any flaw in the jury verdict.

Wingo falsely claims that the jury was not presented with evidence establishing that Pampu's suspension was the result of an agreement between her and Gahagan and that reaching such a conclusion is impossible absent the introduction of the Clemson documents that the Circuit Court deemed inadmissible. Wingo Br. at 18. This argument is not only unsupported by any citation, but it is also false. As detailed extensively in Pampu's moving brief and reiterated in this reply, the trial record contains sufficient evidence to show that Wingo and Gahagan conspired to – and did in fact – use the Clemson disciplinary process to have Pampu removed from Clemson, specifically by lying to Clemson. Plaintiff's Trial Exhibits 6, 14, 16; Trial Tr. at 110:14-17; 330:11-13; 384:10-11; 451:5-6, 12-13, 16, 19-21; 452:1-2. (R. __). Wingo then rehashes her faulty argument that the jury was incapable of determining that Wingo and Gahagan provided false information to Clemson without revealing the content of Wingo and Gahagan's communications with Clemson. Wingo Opp. Br. at 18-19. As noted above, this is nonsense, as Pampu introduced more than enough evidence to support the jury's finding that Wingo and Gahagan lied during the Clemson disciplinary process in order to have Pampu removed from Clemson. Trial Tr. at 110:14-17; 330:11-13; 384:10-11; 451:5-6, 12-13, 16, 19-21; 452:1-2; Plaintiff's Trial Exhibits 6, 14, 16. (R. __). Thus, Wingo's futile claims are easily contradicted by the evidence introduced at trial, and the jury's civil conspiracy verdicts should be reinstated.

D. Wingo And Gahagan's Ability To Remove Or Suspend Pampu Is Irrelevant

Wingo incorrectly asserts that Pampu cannot succeed on his civil conspiracy claim "because Ms. Wingo and Mr. Gahagan did not have the power or ability to 'remove' or suspend Pampu from Clemson." Wingo Opp. Br. at 19. This argument was anticipated and thoroughly

dealt with in Pampu's Initial Brief. Pampu Initial Br. at 23-26. Wingo's unsuccessful attempt to distinguish the relevant caselaw underpinning Pampu's correct position is handled definitively below. Section II. D., *infra*. Wingo also bizarrely and incoherently misconstrues Pampu's civil conspiracy claim, incorrectly asserting that Pampu is "claiming the Defendants' conspiracy was [his] suspension" from Clemson. Wingo Opp. Br. at 19. Pampu has never claimed that Wingo and Gahagan's conspiracy was his suspension from Clemson. As painstakingly detailed throughout this litigation, Pampu has consistently stated that his civil conspiracy claim is based on the false statements and representations that Wingo and Gahagan made to Clemson during the disciplinary process to get him removed from Clemson. Thus, Wingo's assertion that Pampu is trying to "have his cake and eat it to [*sic*]" by pressing his civil conspiracy claims while excluding the Clemson Title IX documents is a complete fantasy. Wingo Opp. Br. at 19. Wingo has utterly failed to provide any argument to prevent this Court from overturning the Circuit Court's decision and reinstating the jury verdicts regarding Pampu's civil conspiracy claims.

II. PAMPU PRESENTED SUFFICIENT EVIDENCE AT TRIAL TO PROVE THE ELEMENTS OF CIVIL CONSPIRACY

A. The Jury Received Evidence Showing That Wingo And Gahagan Entered Into An Agreement To Have Pampu Removed From Clemson

Wingo offers an overly simplistic accounting of the evidence that Pampu presented to the jury regarding her and Gahagan's agreement to have Pampu removed from Clemson. Wingo Opp. Br. at 19-20. Indeed, she fails to discuss in any detail the evidence that Pampu presented to the jury. *Id*. at 20. Instead, Wingo relies entirely on her own attorney's baseless assertion that the text messages plotting the conspiracy to have Pampu removed from Clemson were just opinions. *Id*. This is patently absurd. Indeed, in one of these text messages, Wingo clearly tells Gahagan that part of her "wants to have [Pampu] expelled." Plaintiff's Trial Exhibit 16 at CJG_0000301. (R. __). In another message, Gahagan tells Wingo that she would have "four chances in the school to

get what" she wanted and that it would be "no problem" to get Clemson to "charge[]" Pampu. Plaintiff's Trial Exhibit 16 at CJG_0000301, CJG_0000303. (R. __). These are not opinions; rather, they show that Wingo and Gahagan planned to utilize the Clemson process to have Pampu removed from the university. As detailed below, it is clear that these messages and the other evidence presented at trial are sufficient to sustain the jury's finding that Wingo and Gahagan entered into an agreement to have Pampu removed from Clemson.

Wingo also improperly relies on *Pye v. Est. of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006), *overruled by Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021), to assert, "The mere existence of a romantic relationship and [a shared opinion on the proper outcome of the Clemson Title IX process] do not establish an agreement or a wrongful intent to injure Pampu." Wingo Opp. Br. at 20. In *Pye*, there was "absolutely no evidence submitted" to support an agreement between the defendants, and there was no evidence establishing "any wrongful intent" by the defendants to injure the plaintiff. *Pye*, 369 S.C. at 568, 633 S.E.2d at 511-12. Here, the jury was presented with a significant amount of evidence showing that Gahagan and Wingo agreed to act in concert with the intended and primary purpose of injuring Pampu.

The jury heard testimony and received documentary evidence that would permit – at a bare minimum – an inference that Wingo and Gahagan conspired to have Pampu removed from Clemson based on the nature of the acts they committed, their relationship, and their interests. *See Pridgen v. Ward*, 391 S.C. 238, 248, 705 S.E.2d 58, 64 (Ct. App. 2010) (holding that circumstantial evidence supporting an inference that a plot to harm existed was sufficient to support a jury's finding of liability for civil conspiracy thus requiring denial of a JNOV motion). Wingo and Gahagan were romantically involved when Wingo had consensual sex with Pampu on October 24, 2015. Trial Tr. at 93:21-25; 293:15-17; 418:10-12, 19-21; 499:18-500:5. (R. __). Immediately

following her encounter with Pampu, Wingo did not express any concern that the sex was non-consensual; rather, she repeatedly lamented that she feared that her sexual encounter with Pampu would irreparably harm the possibility of her desire to have a serious relationship with Gahagan. Trial Tr. at 109:15-21; 317:1-15; 331:18-19; 684:2-685:20-25; 736:10-17; 736:18-25; 738:1-13; 839:16-840:8; 862:18-25. (R. __). Wingo had good reason to fear that her consensual encounter with Pampu on October 24, 2015 would doom any prospect of a relationship with Gahagan. According to Wingo, Gahagan was "furious" after she merely kissed Pampu in September of 2015. Plaintiff's Trial Exhibit 7 at Wingo ESI 000135. (R. __).

In the afternoon of October 25, 2015, a jealous Gahagan confronted Wingo after her sexual encounter with Pampu became public knowledge. Trial Tr. at 333:2-10; 429:18-22. (R. __). As part of her shameful attempt to save her relationship with Gahagan, Wingo feigned incapacitation. Plaintiff's Trial Exhibit 6; Trial Tr. at 110:14-17; 330:11-13; 332:21-25; 492:9-14. (R. __). In order to avoid further humiliation, Gahagan told Wingo that she was raped if she did not remember the encounter. Trial Tr. at 337:1-4. (R. __). None of these statements made by either Wingo or Gahagan were true. On the morning of October 25, 2015, before she had even spoken with Gahagan about her consensual sexual encounter with Pampu, Wingo bluntly instructed Pampu, "do not tell [Gahagan] what happened." Plaintiff's Trial Exhibit 6; Trial Tr. at 110:14-17; 330:11-13. (R. __). On November 16, 2015, Gahagan and Wingo exchanged the following text messages regarding their plan to injure Pampu by having him removed from Clemson:

- Gahagan to Wingo: "One step closer to him being gone." Plaintiff's Trial Exhibit 16 at CJG_0000299. (R. __).
- Gahagan to 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. __).
- Wingo to 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 to Wingo: "There's no way this kid can stay at this school. It's honestly impossible." Plaintiff's Trial Exhibit 16 at CJG_0000303. (R. __).

- Gahagan to Wingo: "I'll be honest. Getting him charged criminally is gonna be a bit harder because of no physical evidence but through the school should be no problem." Plaintiff's Trial Exhibit 16 at CJG_0000303. (R. __).

- Gahagan to Wingo, "He's gone Erin. It's not gonna be possible for him to stay." Plaintiff's Trial Exhibit 16 at CJG_0000303. (R. __).

In January of 2017, Gahagan sent a series of text messages to Pampu admitting that he knew that Wingo "wanted to have sex" with Pampu on the night in question and that he and Wingo lied at the Clemson disciplinary hearing. Plaintiff's Trial Exhibit 14; Trial Tr. at 451:5-6, 12-13, 16, 19-21; 452:1-2. (R. __).

The jury received all of the above-referenced evidence either through testimony or properly admitted exhibits prior to rendering a verdict in Pampu's favor regarding his civil conspiracy claim. Taken as a whole and in the proper context the aforementioned evidence would, at a minimum, allow a jury to properly infer that Wingo and Gahagan agreed to utilize the Clemson disciplinary process in order to harm Pampu by having him removed from the school. *See Pridgen*, 391 S.C. at 248, 705 S.E.2d at 64 (holding that an inference gleaned from circumstantial evidence is sufficient to support jury finding that conspiratorial agreement to commit harm existed). Accordingly, Wingo's reliance on *Pye* is woefully misplaced. [5] Further, the aforementioned

[5] The cases that Wingo cites for the standard that must be met to establish a conspiracy are also inapposite. *See First Union Nat. Bank of S.C. v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998) (finding no proof of a conspiracy where there was no evidence of motive to engage in a common plan); *Cowburn v. Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005) (dismissing civil conspiracy claim at summary judgment stage due to lack of any evidence of an agreement or intent to injure); *Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007) (same). Although it is procedurally distinguishable, the only other case referenced by Wingo arguably supports Pampu's position. *See Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 9, 10-

evidence more than satisfies the very low bar for sustaining the jury's civil conspiracy verdict in the face of Wingo's JNOV motion. As this Court has explicitly explained, "A motion for JNOV may be granted **only if no reasonable jury** could have reached the challenged verdict," and "The 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 (emphasis added). Because the evidence in the trial record far exceeded this minimal threshold, it is clear that the Circuit Court improperly disturbed the jury's findings.

B. The Jury Received Evidence Showing The Commission Of An Unlawful Act Or A Lawful Act By Unlawful Means

Wingo concedes that Pampu has proven the first two elements of tortious interference with a contract. *See* Wingo Opp. Br. at 21-23 (failing to raise any argument as to the existence of a valid contract or Wingo and Gahagan's knowledge thereof). Wingo incorrectly claims that "there is no evidence in the record to explain or establish that the alleged contract between Pampu and Clemson was ever breached" because "Pampu clearly testified at trial that he was permitted to return to Clemson under certain circumstances." *Id*. at 21. This is simply a rehashed version of Wingo's faulty claim that Pampu was never removed from Clemson. As detailed above, Wingo's argument has no basis in fact because Pampu was indeed removed from Clemson. *See* Section I. A., *supra*. (explaining in detail that Pampu was removed from Clemson). Wingo also relies on inapposite caselaw to support her faulty position. In *First Union Mortg. Corp. v. Thomas*, 317 S.C. 63, 451 S.E.2d 907 (Ct. App. 1994), the plaintiff failed to prove procurement of a breach of contract because the contract at issue was fully performed. *First Union Mortg. Corp.*, 317 S.C. at 73, 451 S.E.2d at 913. Here, Clemson unilaterally failed to perform its portion of the contract it

14, 344 S.E.2d 379 381, 382-84 (Ct. App. 1986), *overruled on other grounds by Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021) (refusing to dismiss civil conspiracy claims where plaintiffs alleged agreement amongst defendants to cause harm).

had with Pampu due to the false statements that Wingo and Gahagan provided during the disciplinary process. Trial Tr. at 119:2-3; 124:6-11; 249:7-14, 24-25; 451:5-6; 451:12-13, 16; 452:1-2; 451:19-22; Plaintiff's Trial Exhibits 14, 16. (R. __). Accordingly, Wingo's claim that the contract between Pampu and Clemson was never breached must fail.

Wingo also falsely asserts, "Pampu cites no record evidence indicating or supporting an assertion that *Ms. Wingo* was acting with an absence of justification . . . because there is no record evidence supporting Pampu's statement in his brief that Ms. Wingo knowingly provided false statements to Clemson." Wingo Opp. Br. at 22 (emphasis in original). Even if this were true, it would not save Wingo. *See Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 567, 861 S.E.2d 774, 776 (2021) (explaining that "each conspirator is liable for all damages naturally resulting from any wrongful act of a co-conspirator in exercising the joint enterprise.") (internal quotations and citation omitted). Regardless, review of Pampu's Initial Brief and the trial record shows that her claim is patently false. On October 25, 2015, the morning after her consensual sexual encounter with Pampu, Wingo explicitly told Pampu, "do not tell [Gahagan] what happened," demonstrating a clear recollection of her sexual encounter with Pampu the previous evening and thereby establishing that she was not incapacitated in any way during the encounter. Plaintiff's Trial Exhibit 6; Trial Tr. at 110:14-17; 330:11-13. (R. __); *see also* Pampu Initial Br. at 6-7, 19 (citing this evidence). On the evening on October 25, 2015, Wingo sent Gahagan a text message lamenting her sexual encounter with Pampu, not because she was raped or sexually assaulted, but because she "screwed up" with Gahagan. Trial Transcript at 454:21-25; Plaintiff's Trial Exhibit 15; *see also* Pampu Initial Br. at 8 (citing this evidence). Despite the fact that she clearly knew that the encounter was consensual, Wingo lied to Clemson regarding the nature of her dalliance with Pampu during the investigation and adjudication stages of the disciplinary process, and the

jury heard and received evidence of these lies. Wingo testified that she "cried throughout" her initial meeting with Clemson, thus falsely indicating that Pampu had sexually assaulted her even though she knew that the encounter was consensual. Trial Tr. at 384:10-11. (R. __); *see also* Pampu Initial Br. at pp. 8, 25 (citing this evidence). Moreover, contrary to Wingo's misguided claim, the messages that Gahagan sent Pampu in January 2017 definitively confirm that **both** Wingo and Gahagan lied to Clemson in order to have Pampu removed from the school. Gahagan repeatedly affirmed Pampu's innocence and stated, in no uncertain terms, "I lied in that hearing. Erin wanted to have sex that night." Trial Tr. at 451:5-6, 12-13, 16, 19-21; 452:1-2; Plaintiff's Trial Exhibit 14. (R. __); *see also* Pampu Initial Br. at 10, 20, 25-26 (citing this evidence). If Wingo wanted to have sex with Pampu on the night in question, then she consented to the encounter. Therefore, her statements made to Clemson that she was incapacitated and unable to consent were abject lies. Wingo acted with an absence of justification when she engaged in fraud, misrepresentation, and deceit to have Pampu removed from Clemson.

The caselaw that Wingo relies on to support her faulty position is inapposite. In *BCD LLC v. BMW Mfg. Co.*, LLC, 360 F. App'x 428 (4th Cir. 2010), an unpublished federal case involving a motion for summary judgment, the Fourth Circuit noted that there was no contract between the plaintiff and Clemson University for the defendant to interfere with. *BCS LLC*, 360 F. App'x at 434-35.[6] Moreover, the plaintiff failed to offer "any evidence that [the defendant] utilized any 'improper means,' such as violence, threats, bribery, fraud, misrepresentation, deceit, or duress, to interfere in his relations with Clemson." *Id*. at 435. The plaintiff also conceded that there was no evidence that the defendant utilized improper means to interfere with his business relationship with

[6] Moreover, to the extent that a case from the Fourth Circuit can be considered South Carolina authority, Wingo cannot rely on *BCD LLC* in support of her incorrect arguments. Rule 268(d)(2), SCRAP.

Clemson. *Id*. at 435-36. The plaintiff only maintained that the defendant's actions were motivated by a desire to assume full control over a development project that both sides were trying to win. *Id*. at 436. Regardless, the Fourth Circuit determined that the defendant's legitimate desire to find a suitable location for the development project at issue would override any hypothetical improper purpose for interfering with the plaintiff's business interests. *Id*.

Here, Wingo does not dispute the existence of a contract between Pampu and Clemson. Additionally, as detailed extensively above (and in Pampu's Initial Brief), the jury received a significant amount of evidence showing that Wingo was acting with an improper purpose when she knowingly presented Clemson with a false narrative of her consensual sexual encounter with Pampu in order to have him removed from the university. Plaintiff's Trial Exhibits 6, 14, 16; Trial Tr. at 110:14-17; 119:2-3; 124:6-11; 249:7-14, 24-25; 330:11-13; 384:10-11; 450:2-4; 450:22-452:2. (R. __); *see also* Pampu Initial Br. at 6-10, 19-20, 25-26 (citing this record evidence). Thus, the evidence in the trial record was more than sufficient to support the jury's finding that Wingo acted without justification when she interfered with the contract that existed between Pampu and Clemson. *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.").

In a last-ditch effort to avoid responsibility for her reprehensible actions, Wingo asserts that the false statements she made during the Clemson Title IX process are privileged, thus making her immune from liability for civil conspiracy. Wingo Opp. Br. at 22. In making this incorrect claim, Wingo wrongly assumes that she was participating in an administrative and/or quasi-judicial process. *Id*. As explained in great detail in Pampu's brief in opposition to Wingo's appeal, Clemson's Office of Community and Ethical Standards ("OCES") is not a state agency, nor were there sufficient procedural protections that would permit any reasonable observer to label the

Clemson Title IX process a quasi-judicial proceeding. Pampu Opp. Br. at 9-16.[7] Further, Wingo once again relies on completely inapposite caselaw in support of her flawed assertion. Both cases that she cites for her incorrect claim of privilege involved causes of action for **defamation**. *See Corbin v. Washington Fire & Marine Ins. Co.*, 278 F. Supp. 393, 394-95, 398-400 (D.S.C.), *aff'd*, 398 F.2d 543 (4th Cir. 1968) (District of South Carolina finding that plaintiff's defamation claim was barred because statements at issue occurred in an arbitration proceeding); *Hartman v. Keri*, 883 N.E.2d 774, 776-77 (Ind. 2008) (Supreme Court of Indiana determining that professor's defamation claims against student complainants were barred because students' statements were protected by an absolute privilege). Pampu has never sought to hold Wingo liable for defamation based on statements that she made to Clemson. Rather, his defamation claim is based on false statements that Wingo and Gahagan made **outside** of the Clemson process. Trial Tr. 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. __). Wingo has failed to identify any controlling authority that extends a privilege or immunity to knowingly offering false statements made as part of a civil conspiracy.[8] Accordingly, her argument must fail.

C. The Jury Received Evidence Showing The Commission Of An Overt Act In Furtherance Of Wingo And Gahagan's Agreement To Have Pampu Removed From Clemson

Wingo offers a short, conclusory argument lacking citations to any supporting authority to incorrectly assert that Pampu did not present any evidence to the jury showing the commission of

[7] All portions of the Pampu Opp. Br. cited in this reply are incorporated by reference as if repeated herein.

[8] A very recent decision from the Connecticut Supreme Court on this issue may be helpful to the Court in determining the immunity issue. *See Khan v. Yale Univ.*, No. 20705, 2023 WL 4166605 at *23 (Conn. June 27, 2023) (holding that a university Title IX proceeding that lacks adequate procedural safeguards does "not qualify as quasi-judicial for purposes of absolute immunity.").

an overt act in furtherance of the conspiracy. Wingo Opp. Br. at 23.[9] Thus, she has abandoned this issue on appeal. *See Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106 n.3, 439 S.E.2d 283, 285 n.3 (Ct. App. 1993) (explaining that "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."). Regardless, as explained above, it is clear that Pampu introduced evidence showing that Wingo and Gahagan lied to or intentionally misled Clemson throughout the disciplinary process. Plaintiff's Trial Exhibits 6, 14, 16; Trial Tr. at 110:14-17; 119:2-3; 124:6-11; 249:7-14, 24-25; 330:11-13; 384:10-11; 450:2-4; 450:22-452:2. (R. __). The jury did not need to know exactly what Wingo and Gahagan said to Clemson. Rather, to issue a finding of liability, the jury only needed to know that Wingo and Gahagan lied to Clemson to effectuate their civil conspiracy. As detailed above, the evidence in the trial record supports the jury's finding that Wingo and Gahagan did indeed lie to Clemson in order to have Pampu expelled.

D. The Jury Received Evidence Showing Actual Damages Proximately Related To Wingo And Gahagan's Actions

Wingo incorrectly asserts that "there was no evidence presented to the jury to establish that the alleged lies told by Ms. Wingo and Mr. Gahagan led to Pampu's 'removal from Clemson.'" Wingo Opp. Br. at 24. As detailed above and in his initial moving brief, Pampu introduced sufficient evidence at trial to show that Wingo and Gahagan's concerted lies to Clemson during the disciplinary process resulted in his removal from Clemson. Plaintiff's Trial Exhibits 6, 14, 16; Trial Tr. at 110:14-17; 119:2-3; 124:6-11; 249:7-14, 24-25; 330:11-13; 384:10-11; 450:2-4;

[9] The case that Wingo cites as a standard is inapplicable to the instant matter. *See Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115-16, 682 S.E.2d 871, 874-75 (Ct. App. 2009), *overruled by Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021) (granting motion to dismiss regarding civil conspiracy claim where plaintiff "reiterated verbatim the allegations contained in its cause of action for breach of contract accompanied by fraudulent act in its civil conspiracy claim"). As Pampu has repeatedly explained, his claims for civil conspiracy and defamation have distinct factual bases.

450:22-452:2. (R. __). Accordingly, there was no basis for the Circuit Court to disturb the jury's finding on this issue, and the jury verdicts and damages awards related to Pampu's civil conspiracy claims should be reinstated. *Welch*, 342 S.C. at 300, 536 S.E.2d at 419.

Wingo's claim that it is "highly probable" that Clemson decided to suspend Pampu based on information provided by other student witnesses (including Pampu himself) is speculative and nonsensical. Wingo Opp. Br. at 24. Pampu would not have been subject to any disciplinary action if Wingo and Gahagan had not engaged in a successful conspiracy to weaponize the Clemson disciplinary process against him. The only reason that Clemson charged Pampu with any violations of Clemson's Student Code of Conduct – including violations related to alcohol consumption and disorderly conduct – was because Wingo falsely claimed her sexual encounter with Pampu was non-consensual. Wingo and Gahagan's decision to participate in the Clemson process was completely voluntary. Indeed, Wingo could have stopped the entire disciplinary process at her initial meeting with Clemson if she just told the truth, namely, that her sexual encounter with Pampu on October 24, 2015 was consensual. Instead, she and Gahagan made the affirmative choice to provide false information to Clemson in order to have Pampu removed from the school. These actions are sufficient to support a finding of liability for civil conspiracy against Wingo and Gahagan. *See Pridgen*, 391 S.C. at 243, 244, 249, 705 S.E.2d at 61, 62, 64 (upholding jury verdict of liability for civil conspiracy against employees who provided false statements to their employer in order to have another employee fired).

Wingo's claim that Pampu's admitted violations of Clemson's policies "may have" prevented him from obtaining admission to dental school misses the point. Wingo Opp. Br. at 24-25. As noted above, the only reason Pampu was facing any disciplinary action was because Wingo and Gahagan conspired to use the Clemson Title IX process to harm him. If Wingo and Gahagan

had not entered into a successful conspiracy to have Pampu removed from Clemson, he would not have had any disciplinary history to report when applying to dental school. Similarly, Wingo's assertion that the Clemson Settlement breaks the causal chain with regard to damages cannot survive even the slightest scrutiny. *Id*. at 25.[10] If Wingo and Gahagan had not engaged in a conspiracy to have him removed from Clemson, Pampu would not have had to sue and ultimately settle with Clemson.[11] Pampu would have been required to report his disciplinary history when applying to dental school regardless of his settlement with Clemson, as the application question referenced by Wingo does not state that applicants can exclude disciplinary action that has been expunged. Dental School App. at 3. (R. __). Thus, the Wingo-Gahagan conspiracy remains the proximate cause for Pampu's damages.

Wingo falsely asserts that "the jury was not presented with a single monetary figure regarding Pampu's lost income." Wingo Opp. Br. at 26. At trial, Pampu testified that his base salary as a sales representative was $72,000 per year. Trial Tr. at 271:21-22. (R. __). Pampu's expert, Steven Shedlin, testified that Pampu would earn significantly less over the course of his lifetime as a sales representative than what he could have earned as an orthodontist. Trial Tr. at 622:3-12. (R. __). The jury's award of $3,000,000 in damages amounts to a little more than a doubling of Pampu's base salary of $72,000 as a salesman over the course of forty years, the remainder of Pampu's working life. Indeed, receiving half of the yearly income that one could

[10] Wingo inexplicably repeats this argument when raising an improper waiver defense. Wingo Opp. Br. at 30. However, the case that she relies upon is clearly inapposite. *See Stone v. Bethea*, 251 S.C. 157, 164, 161 S.E.2d 171, 174-75 (1968) (motor vehicle negligence case where thief unlawfully operating respondent's stolen car injured appellant).

[11] Importantly, the Clemson Settlement Agreement explicitly notes that Pampu "**denies** the allegations of [Wingo's] November 11, 2015 formal Title IX complaint to Clemson University, **the basis of which the hearing board's decision** . . . **was made**." Clemson Settlement Agreement at 1. (R. __) (emphasis added). Thus, Pampu has consistently stated his disagreement with the Clemson findings and decision.

have earned as an orthodontist clearly constitutes "significantly less" in terms of lifetime earnings. Thus, while the jury did not provide a mathematical formula for how it reached its damages award, there is no requirement to do so, and it would be incorrect to say that the award was speculative.

Wingo asserts that various opinions rendered by Shedlin were unreasonable, unsupported, and speculative; she also challenges the validity of certain assumptions Shedlin made when formulating his opinions. Wingo Opp. Br. at 25-26. This is wholly improper. *See RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012) (explaining that, when deciding a JNOV motion, "neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence."). At trial, Wingo's counsel never objected to any of the opinions and assumptions she now asks this Court to improperly deem not credible. Trial Tr. at 601:10-612:3. (R. __). Accordingly, she is barred from asserting these arguments on appeal. *State v. Johnson*, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005). Moreover, some of the testimony that Wingo belatedly objects to was elicited by her own counsel on cross-examination. Wingo Opp. Br. at 25-26. Thus, even if the testimony at issue were improperly admitted (it was not), there can be no prejudice to Wingo. *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 41, 691 S.E.2d 135, 145 (2010). Finally, because Wingo's counsel examined Shedlin in an attempt to challenge the weight of his testimony rather than its admissibility, it was the jury's decision alone to decide what weight to provide to Shedlin's testimony. *Madden v. Cox*, 284 S.C. 574, 583, 328 S.E.2d 108, 114 (Ct. App. 1985)

Wingo does not cite any affirmative caselaw in asserting that Pampu's damages are "highly speculative and not ascertainable within a reasonable degree of certainty" and instead simply fails to distinguish two cases cited by Pampu. Wingo Opp. Br. at 25-28. In *Mills v. S.C. State Ports Auth.*, 435 S.C. 213, 865 S.E.2d 910 (Ct. App. 2021), this Court explained that, in the absence of

documentation regarding a plaintiff's lost income, a jury is "free to accept or reject his testimony about 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 provided the jury with testimony that allowed them to extrapolate his annual salary and simply asserted that he was unable to maintain a regular work schedule due to an injury without providing a detailed accounting of his reduced earning capacity. *Id*. at 220, 228-30, 865 S.E.2d at 913, 918. In the instant matter, the jury heard testimony directly from Pampu that he earns $72,000 per year, as well as testimony from Shedlin that Pampu's career earnings will be significantly less than they would have been if he were able to become an orthodontist. Trial Tr. at 271:21-22; 622:3-12. (R. __). *Mills* clearly supports Pampu's position.

In *Pridgen*, this Court determined that employees who provided false statements to their employer in order to have their co-worker fired were liable for civil conspiracy even though the offending employees did not (and could not) make the ultimate decision to fire their co-worker. *Pridgen*, 391 S.C. at 241, 243, 244, 249, 705 S.E.2d at 60, 61, 62, 64. Thus, *Pridgen* is essentially factually identical to the instant matter in this important regard.[12] If a person is wrongly executed, the hangman is not responsible; rather, the individuals who made the false accusations that cause the wrongful death bear the blame. Clemson was a mere executioner tricked by Wingo and Gahagan into doing their dirty work. Wingo has completely failed to distinguish *Pridgen*. Based on the foregoing, the jury's verdicts and awards should be reinstated.

[12] Wingo's claim that her lack of causation argument is not addressed by *Pridgen* is laughable. Wingo Opp. Br. at 28. *Pridgen* clearly states that there can be liability for civil conspiracy when the conspirators do not have the actual authority to inflict the harm resulting from the conspiracy. Her assertion that *Pridgen* is distinguishable because the defendants made different arguments than she does is nonsensical, as is her reliance on the lack of information regarding the process utilized and evidence considered by the South Carolina Department of Corrections. *Id*. at 27-28. These issues are irrelevant to the *Pridgen* Court's holding that directly impacts a central issue in this case, namely, that one need not deliver the *coup de grâce* to be liable for civil conspiracy.

III. THE DAMAGES ASSOCIATED WITH PAMPU'S CIVIL CONSPIRACY CLAIM ARE DISTINCT FROM HIS DEFAMATION CLAIM

Wingo incorrectly asserts that the damages sought by Pampu's civil conspiracy claim are duplicative of those sought by his defamation claim. Wingo Opp. Br. at 28-29. In furtherance of this false contention, Wingo completely mischaracterizes Pampu's causes of action and associated damages when she inaccurately maintains that the damages associated with Pampu's civil conspiracy claim were "general damages for harm to his reputation, embarrassment, and mental distress." *Id*. at 29. Wingo. Indeed, Wingo's own papers show that she has asserted completely disingenuous arguments regarding Pampu's damages. Notably, she admits, "The only alleged damages presented by Pampu with respect to this conspiracy to have him 'removed from Clemson' was his alleged decreased earning capacity based on his inability to get into dental school and become an orthodontist." *Id*. at 24. It is clear that Wingo has engaged in a profoundly shameful effort to mislead this Court. Regardless, all of her inconsistent theories fail.

A party is not required to engage in the election of remedies when he asserts two separate causes of action based on different sets of facts. *Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct. App. 1995). Pampu's civil conspiracy claim is based on Wingo and Gahagan's common plan to have him removed from Clemson, executed by providing false statements within the university disciplinary process and which resulted in economic damages. *See* Pampu Initial Br. at 17-30 (detailing the factual basis of Pampu civil conspiracy claim and associated damages); *see also* Sections I.-II., *supra*. (same). On the contrary, Pampu's defamation cause of action is based on false statements that Wingo and Gahagan made **outside the Clemson process** that resulted in reputational harm. Trial Tr. 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 finding of liability made against Wingo and Gahagan, indicating that they understood that Pampu's separate causes of action arose from distinct facts. Trial Tr. at 977:8-12, 16-22, 25; 978:1-2. (R. __). Finally, the cases cited by Wingo are inapposite. *See Inman v. Imperial Chrysler-Plymouth, Inc.*, 303 S.C. 10, 12-14, 397 S.E.2d 774, 775-76 (Ct. App. 1990) (plaintiff conceded that he had already recovered the damages he was seeking through satisfaction of a prior judgment based on same facts as alleged in subsequent action); *Harper v. Ethridge*, 290 S.C. 112, 123-24, 348 S.E.2d 374, 380-81 (Ct. App. 1986) (declining to make definitive determination at pleading stage on whether plaintiff required to choose between legal remedy or equitable remedy); *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 338-39, 340-41, 306 S.E.2d 616, 618, 619 (1983) (plaintiff sought redundant damages under tort and contract causes of action arising from same set of facts).[13] Election of remedies does not apply here.

IV. PAMPU'S CIVIL CONSPIRACY CLAIMS ARE NOT BARRED BY ESTOPPEL OR WAIVER

For the reasons detailed in Pampu's brief in opposition to Wingo's appeal, the doctrine of collateral estoppel does not apply to Clemson's disciplinary process. *See* Pampu Opp. Br. at 9-24 (detailing the myriad reasons why collateral estoppel does not apply to Clemson's disciplinary process). Briefly, OCES is not a state agency, so its decisions are not entitled to preclusive effect. *Id*. at 9-16. Even if OCES were a state agency (which it is not), collateral estoppel still would not apply because the issue of whether Wingo was incapacitated and unable to give consent was not actually litigated or directly determined in a contested case, nor was this issue necessary to support

[13] Additionally, Wingo's reliance on a concurrence from *Paradis* for the assertion that "for one wrong there is one recovery" does not negatively impact Pampu's position. Wingo Opp. Br. at 28-29. Wingo admits Pampu seeks economic damages related to his civil conspiracy claim. *Id*. at 24. The parties do not dispute that Pampu's defamation claim is limited to reputational and other non-economic damages. Thus, there are two wrongs that warrant two recoveries.

the OCES findings. *Id*. at 16-21. Moreover, the fact that Wingo and Gahagan were able to fool Clemson into believing that Pampu had engaged in misconduct cannot serve as the basis for extinguishing Pampu's civil conspiracy claim, as it would lead to a completely unfair and unjust result. *Id*. at 21-24. Additionally, the Clemson Settlement cannot form the basis of a collateral estoppel defense, as it clearly states Pampu's denial of Wingo's false claims as well as his disagreement with the OCES findings and decision. *Id*. at 24-26.

Wingo failed to argue that Pampu's civil conspiracy claim is barred by the doctrine of waiver before the Circuit Court. *See* Wingo MSJ (failing to raise issue of waiver); Wingo Post-Trial Motions (same). Accordingly, the issue is not ripe for appeal. *See Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993) (holding "where an issue has not been ruled upon by the trial judge nor raised in a post-trial motion, such issue may not be considered on appeal."). Regardless, the Clemson Settlement Agreement cannot possibly support Wingo's tardy waiver defense. Pampu did not release Wingo as part of his settlement with Clemson. Clemson Settlement Agreement at 2-3, ¶ 7 (R. __). Additionally, the Clemson Settlement Agreement clearly notes that Pampu "**denies** the allegations of [Wingo's] November 11, 2015 formal Title IX complaint to Clemson University, **the basis of which the hearing board's decision** . . . **was made**." Clemson Settlement Agreement at 1. (R. __) (emphasis added). Accordingly, it is clear that Pampu did not abandon any right to seek redress from Wingo as part of the Clemson Settlement Agreement. The only case cited by Wingo to support her faulty claim is inapposite. *See Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344-45, 415 S.E.2d 384, 388 (1992) (defendants waived rights under contract with homeowner where defendants were aware that homeowner made impermissible alterations to limited common area and had prior notice of at least one alteration but waited four years to voice complaint).

V. THE CIRCUIT COURT IMPROPERLY INVADED THE PROVINCE OF THE JURY BY GRANTING THE JNOV MOTION

Wingo relies solely on a block quotation from South Carolina Rule of Civil Procedure 50(b) in a failed effort to rebut Pampu's assertion that the Circuit Court improperly invaded the province of the jury by reweighing the evidence in deciding the JNOV motion. Wingo Opp. Br. at 31.[14] However, Rule 50(b) only permits the Circuit Court to revise its directed verdict ruling based on **legal questions** raised by a JNOV motion. Rule 50(b), SCRCP. As detailed extensively in Pampu's Initial Brief, this Circuit Court impermissibly relied on its own interpretation of the **facts** and ignored reasonable inferences and conclusions that could have been drawn by the jury based on the evidence in the record at trial when it issued its incorrect JNOV decision. Pampu Initial Br. at 31-38. Indeed, Wingo makes absolutely no effort to distinguish the many cases cited by Pampu that require reinstatement of the jury's civil conspiracy verdicts and award due to the Circuit Court's inappropriate decision to decide credibility issues and resolve conflicts in the evidence presented at trial. Wingo Opp. Br. at 31; *see also* Pampu Initial Br. at 31-38 (extensively detailing cases that support reinstatement of jury verdict due to Circuit Court's misconduct). There simply was no basis for the Circuit Court's decision to overturn the jury's civil conspiracy verdicts.

CONCLUSION

For the reasons stated in Pampu's initial brief as well as those stated and reiterated above, this Court should reverse the ruling of the Circuit Court and reinstate the jury's verdicts for civil conspiracy.

[14] Wingo also deliberately misconstrues Pampu's argument. Pampu does not contend that a JNOV motion can never be granted. He asserts, based on relevant caselaw, that a JNOV motion cannot be granted based on a trial court's improper decision to substitute its own interpretation of the facts after the jury has rendered its decision. Pampu Initial Br. at 31-38.

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