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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

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.

RESPONDENTS-APPELLANTS ERIN WINGO AND DAVID WINGO'S FINAL BRIEF IN RESPONSE TO APPELLANT/RESPONDENT'S BRIEF OF PAMPU

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INTRODUCTION

On over thirty occasions in his brief, Appellant-Respondent Andrew Pampu ("Pampu") repeated his assertion that Respondents-Appellants Erin Wingo ("Ms. Wingo") and Colin J. Gahagan ("Mr. Gahagan") engaged in a conspiracy to have Pampu "removed from Clemson." This claim is fundamentally flawed for various reasons, including: (1) Pampu was never "removed" from Clemson University ("Clemson"); (2) there was no evidence at trial regarding what Ms. Wingo or Mr. Gahagan told Clemson; (3) there was no evidence at trial that Clemson's decision to suspend Pampu was based on statements by Ms. Wingo or Mr. Gahagan; and (4) Ms. Wingo and Mr. Gahagan did not have the power or ability to "remove" Pampu from Clemson. These factual flaws underlying Pampu's civil conspiracy claim mandate an affirmance of the trial court's order granting judgment notwithstanding the verdict.

In addition to being factual flawed, Pampu's civil conspiracy claim also fails because he did not prove the existence of an agreement between Ms. Wingo and Mr. Gahagan, and he failed to proffer sufficient evidence of non-speculative damages. Further, recovery for civil conspiracy would be duplicative of Pampu's defamation claim. Moreover, Pampu is collaterally estopped from asserting his civil conspiracy claim based on the outcome of Clemson's Title IX process, and lastly, Pampu waived damages based on his "removal from Clemson" due to his settlement with Clemson.

COUNTER-STATEMENT OF ISSUES ON APPEAL

1. Did the trial court properly grant Respondents-Appellant Erin Wingo's post-trial motion seeking a JNOV on Pampu's civil conspiracy claim.

COUNTER-STATEMENT OF THE CASE

At the trial in this matter, Pampu asserted that Ms. Wingo and Mr. Gahagan conspired to have him "removed from Clemson." (R. 1415, lines 20-25; R. 1586, lines 20-25). More specifically, Pampu asserted that the two "perpetrated a fraud on Clemson" and that they "worked

together to get [him] kicked out of school when they made statements to Clemson." (R. 2234, line 24 - 2235, line 6). Ultimately, the jury returned a verdict in favor of Pampu on his civil conspiracy claim against Ms. Wingo for $2,000,000 and against Mr. Gahagan for $1,000,000. (R. 1084-85). Ms. Wingo and Mr. Gahagan filed post-trial motions to, among other things, have the civil conspiracy verdicts set aside. The trial court did set aside these verdicts for multiple reasons, including: (1) there was no evidence of an agreement between Ms. Wingo and Mr. Gahagan; (2) there was no evidence of the commission of any unlawful act; (3) there was no evidence of monetary damages; and (4) the damages for the civil conspiracy claim were the same as the defamation cause of action, and Pampu is not entitled to duplicative recovery. (R. 6-7).

COUNTER STATEMENT OF THE FACTS

With respect to the events of October 24, 2015, Ms. Wingo incorporates by reference her recitation of the facts at pp. 3–7 of her opening brief. Briefly, Ms. Wingo maintains that she was too intoxicated to consent to the sexual intercourse with Pampu on that night. Because Pampu's civil conspiracy claim is based on his "removal from Clemson," the most salient facts for purposes of this responsive brief are what happened following the events of October 24, 2015.[1]

I. Complaint and investigation.

On October 27, 2015, Clemson's Office of Community and Ethical Standards ("OCES") received information from a resident assistant reporting that a resident may have been sexual assaulted on October 24, 2015, by Pampu. (R. 2095, lines 8-14; R. 2895; R. 3028; R. 2404, line 1 - 2405, line 3). Ms. Wingo did not make the initial complaint, nor did Mr. Gahagan. (R. 2895).

[1] Although some of these facts were excluded from the trial in this matter, Ms. Wingo argues at length in her appeal and opening brief that this exclusion was in error and should be reversed. Regardless, understanding these truths and facts further establish why Pampu's claim for civil conspiracy cannot be sustained.

After receiving the initial complaint, Clemson's then Deputy Title IX Coordinator, Ms. Alessia Smith, reached out to Ms. Wingo, the victim identified in the complaint, to discuss the process. (R. 2101, line 25 - 2102, line 5; R. 2123, lines 16-24).

Although she did not file the initial complaint, Ms. Wingo later agreed to move forward with a formal complaint, and Clemson instituted an investigation of the October 24, 2015, incident. (R. 2102, lines 13-22; R. 2123, line 4 - 2124, line 14; R. 3067). Pampu was properly notified of the investigation. (R. 2103, lines 3-5). Suzanne Price and Loreto Jackson were assigned as co-investigators (collectively, the "Investigators") for the case. (R. 2103, lines 6-14; R. 2104, line 24 - 2105, line 1; R. 2407).

The investigation took place from December 1, 2015, to roughly January 28, 2016. (R. 2408-09). During that timeframe, the Investigators interviewed Pampu, Ms. Wingo, and twelve other witnesses or potential witnesses. (R. 2105, lines 8-21; R. 2407). During the investigation, Pampu told the Investigators that he could tell [Ms. Wingo] was drunk when she arrived at the party because she was loud and having a good time. (R. 1488, line 14 - 1489, line 4; R. 1522, lines 15-19; R. 1589, lines 5-10; R. 2439). In talking to Investigators, Pampu also described Ms. Wingo's actions on the night of October 24, 2015, as being "on the bad end of being drunk – occasional stumbling." (R. 2439; R. 1521-22). Both of these statements are part of the Pampu's account in the Investigative Report which he signed, concurring that the accounting of events is true and correct. (R. 2441).

Following the investigation, on February 4, 2016, the Investigators issued a Recommendation. (R. 2105, lines 22-25; R. 2416). The Recommendation indicates that the Investigators reviewed all relevant information to determine if there was a "preponderance of the evidence to suggest," *inter alia*, "[Ms. Wingo] was incapacitated to the point of not being able to

give consent during the incident." (R. 2416; R. 2106, lines 1-4). The Investigators found that, "[w]hen reviewing all credible witness information, there is a preponderance of the evidence to suggest the complainant was incapacitated during the incident and unable to give consent." (R. 2416). The Recommendation further details the evidence supporting this finding, which includes Ms. Wingo's alcohol intake, Pampu's admission that he could tell Ms. Wingo was "drunk" when she first approached him at the party, Pampu's admission that Ms. Wingo was on the "bad end of being drunk," Ms. Wingo's actions—such as crying and vomiting—after returning home from the party, and Ms. Wingo's actions—vomiting and being unable to keep food down—the following day. (*Id.*). The evidence relied on by the Investigators does not include statements by Ms. Wingo that she was raped. (*Id.*). Based on this finding, the Investigators recommended that OCES move forward with a hearing to determine if Pampu violated Clemson's Anti-Harassment and Non-Discrimination Policy. (R. 2417; R. 2106, lines 1-4).

As a result of the Investigative Report, Pampu was charged with the following violations of Clemson's policies: (1) consuming alcohol as a minor; (2) disorderly conduct related to having sexual intercourse outside, which could be considered indecent and lewd, and during which Pampu admitted to being "incredibly drunk"; (3) harm to a person; and (4) sexual misconduct based on Ms. Wingo's incapacitated state during the incident on October 24, 2015. (R. 2104, lines 1-19; R. 3075). On February 11, 2016, Pampu was issued a charge letter detailing the alleged violations. (R. 2106, lines 5-19; R. 3075). This charge letter gave Pampu the option to admit violating the policies and accept the recommend disciplinary action, which was complete dismissal without eligibility to return, or to request an administrative hearing. (R. 2104, lines 20-24; R. 3075). Pampu requested a hearing. (R. 2104, lines 20-24; R. 3075).

II. Disciplinary Hearing and Decision.

Prior to the administrative hearing, Pampu received a copy of the Investigative Report. (R. 2110, lines 6-15). Pampu was also notified as to who the witnesses at the hearing would be and Pampu was informed that he was also permitted to bring witnesses if he chose. (R. 2109, lines 11-24). The administrative hearing occurred before a board of Clemson faculty, staff, and students (the "hearing board"). (R. 2107, line 19 - 2108, line 20). Both Pampu and Ms. Wingo were assisted by licensed attorneys during the hearing. (R. 2107, lines 3-18).

As relevant here, the testimony at this hearing included the following:

- Pampu acknowledged being "heavily intoxicated" by the time the party started on October 24, 2015 and by the time Ms. Wingo first approached him that night. (R. 2762, lines 9-19; R. 2763, lines 8-11).
- Pampu acknowledged having sexual intercourse with Ms. Wingo in public. (R. 2764, line 17 - 2765, line 20).
- Pampu was asked: "[W]hat is your understanding of incapacitation, and do you believe somebody can give [] consent if they're impaired." Pampu answered:

> My understanding of incapacitation is where you really just cannot talk whatsoever. I know, from the school's standpoint, it has – it's different. But for everyone else, at least in my age, everyone in general, when it becomes something like that, you either can give consent or you can't. I mean, it's pretty clear, as I explained earlier, to me, what consent was. And she undoubtedly said yes.

(R. 2780, line 22 - 2781, line 9; *see also* R. 2789, line 24 - 2791, line 5).[2]

[2] Clemson's Anti-Harassment Policy plainly indicates that a person who is impaired "due to the influence of alcohol" is unable to give consent. (R. 394; R. 2114, lines 8-16). The policy indicates that there must be a finding that a respondent knew or had reason to know a complainant was unable to consent due to the impairment. (R. 394-95). Following defense counsel's attempt to question Pampu on the definitions of "rape" and "consent" in the Anti-Harassment Policy, the trial court ruled the Anti-Harassment Policy was inadmissible. (R. 1471-77).

- Pampu also stated that he was "just a little confused on why there's so much about her specific consent when I was **incapacitated <u>too</u>**." (R. 2781, line 24 - 2782, line 1 (emphasis added)).

- Pampu was also asked if he thought Ms. Wingo would have had sex with him if she was sober. Pampu stated in part:

> **If she had been sober**, I – it would have – it didn't stand out to me differently. It – I mean, it didn't – what am I trying to say here? I'm trying to word it so it sounds correct and that I'm actually getting my point across. **<u>Just because she was drunk</u>**, I didn't think she was doing something she wouldn't have done **if she was sober**. So yes, I would – I believe that she would have done it **regardless of her intoxication**.

(R. 2783, line 22 - 2784, line 4 (emphasis added)).

After conducting deliberations, the hearing board found Pampu to be "in violation of alcohol, disorderly conduct, harm to person and sexual misconduct." (R. 2788, lines 17-21; R. 2111, lines 4-6). The Chairperson for the hearing board delivered the following sanctions at the conclusion of the proceedings:

> … As a result of the conduct violation and the deliberation of the hearing, the following sanctions will be imposed: the board has suspended you, Drew. You have the opportunity to reapply in the fall semester of 2016, so immediately after summer. You have a no-contact order for the duration of your time at Clemson. You will be on disciplinary probation for the remainder of your time at Clemson; that includes grad school or anything else. You're being evicted from housing, so no university housing. That's for the remainder of your time at Clemson. Prior to being allowed to reapply, you need to go to CAPS -- you're being referred to CAPS for an evaluation, and you need to complete sexual assault awareness training.

(R. 2823, line 14 - 2824, line 2).

On February 29, 2019, OCES sent Pampu a letter memorializing the findings from the administrative hearing. (R. 2110-2111; R. 3077 ("Decision Letter)). The Decision Letter states that, "[b]ased on the information presented, the hearing board found that [Ms. Wingo] was incapacitated and unable to give consent which you should have reasonably known." (R. 3077; R. 2113, line 25 - 2114, line 7). The Decision Letter indicates that OCES found Pampu to be in violation of all four charges, outlines his sanctions, and informs Pampu of his appeal rights. (R. 3077-79).

The Decision Letter reaffirms the sanction announced during the hearing that Clemson suspended Pampu until August 1, 2016. (R. 3077-79). The Decision Letter also indicates that Pampu was to be placed on disciplinary probation, that he was to be evicted from University housing, that he was to have no contact with Ms. Wingo, that he was to enter an approved counseling program, and that he was to complete an approved course in Sexual Assault Awareness. (R. 3078).

III. Pampu appeals.

On March 4, 2016, Pampu filed his first appeal of the hearing board's decision. (R. 3084; R. 2115, lines 1-11). In this appeal, Pampu complains extensively about the lack of due process involved during the administrative hearing. (*See generally* R. 3084). Pampu also asserts that the decision was not supported by the evidence presented during the hearing. (*Id.*). Ultimately, Pampu concludes his initial appeal by stating:

> . . . I imagine my appeal will fall on deaf ears. No valid points made will even be considered. The appeal will be denied and I will have one shot left with the President or his designee. I truly hope the person doesn't just 'rubber stamp' a denial of my claims and demands for justice and equality within the investigation but they probably will. At that point I'll have no choice but to file a Federal lawsuit against the University I love. It will be a courtroom and a Judge that give me the due process I deserve to get my name and my life back. I know this will be a long

> journey but I'm going to give everything I can to this so that others aren't put in the same unfair and imbalance system my family and I had to endure.

(R. 3082).

On March 22, 2016, the Vice President for Student Affairs for Clemson upheld the decision rendered by the hearing board on February 26, 2016. (R. 3092; R. 2116, lines 6-12). All sanctions remained in place. (R. 3092).

On March 30, 2016, Pampu submitted his second appeal to Clemson's President or his designee. (R. 3093; R. 2116, line 17 - 2117, line 18). This appeal largely repeated the arguments made by Pampu in his initial appeal and also added citations to the hearing transcript in support of his arguments. (R. 3093).

On May 27, 2016, the Chief of Staff for Clemson's President responded to Pampu's second appeal. (R. 3115; R. 2117-18). The letter provides:

> After carefully reviewing all information regarding your disciplinary case, I uphold the findings of the hearing panel that the complainant was unable to give consent and that you knew or should have known of her inability to do so. Based on my review of the record, I find that the appropriate sanction is a **suspension** from Clemson University through August 1, 2017. Your suspension is effective immediately and all other sanctions remain in place, including the no contact order. If you successfully adhere to all of the other sanctions rendered in the February 29, 2016 letter, **you will be eligible to re-enroll for the 2017 fall semester**.

(R. 3115 (emphasis added)). Based on this, Clemson increased the suspension to a full year, but Clemson plainly would have permitted Pampu to re-enroll if he adhered to all of the sanctions.

Rather than adhering to the sanctions and seeking to re-enroll, Pampu applied for admission at the College of Charleston ***before*** the final decision from Clemson on May 27, 2016. (R. 1572, line 17 - 1573, line 14). Although Clemson never told Pampu that he could not return following his suspension, he was ultimately accepted into and transferred to College of Charleston where he graduated with a degree in biochemistry. (R. 1461, lines 16-20; R. 1574, lines 18-23).

IV. Pampu sues Clemson.

On June 15, 2016, and as promised in his initial internal appeal at Clemson, Pampu filed suit in the United States District Court for the District of South Carolina against Clemson, Clemson's Board of Trustees, Clemson's President and Vice President for Student Affairs, Clemson's Title IX Coordinator Executive Director of Equity Compliance, Clemson's Director of Residential Learning, Clemson's Associate Director of Athletics, and Clemson's Executive Director of Campus Recreation alleging several causes of action related to the handling of the Title IX allegations that Pampu engaged in nonconsensual sexual activity with Ms. Wingo. *Doe v. Clemson Univ.*, No. 8:16-CV-1957, 2019 WL 1383822 (D.S.C. Mar. 27, 2019). (R. 18; R. 210; R. 2398, lines 18-21).

This 85-page, 349-paragraph Complaint against Clemson contains a litany of allegations related to the investigation, Title IX hearing, and appeal process. (*See generally* R. 210). Among many other claims, Pampu generally alleges that the investigation was biased and performed by unqualified individuals, that he was not afforded appropriated due process before, during, or after the hearing, the defendants failed to apply the proper evidentiary standard, that the appeals process was inadequate and subjected him to double jeopardy, and that the defendants was biased against him because of his gender. (*Id.*).

As relevant here, Pampu asserted the following allegations in his Complaint against Clemson, et al.:

- Pampu pled that he has been greatly damaged by the actions of Clemson: "his education and career prospects have been severely compromised as he will be unable to gain admission to a graduate school or obtain employment with a disciplinary mark on his academic record." (R. 215).

- Pampu pled that **both he and Ms. Wingo were intoxicated** on October 24, 2015. (R. 265).

On March 21, 2018, the parties in *Doe v. Clemson* participated in mediation and reached a settlement agreement, which was reduced to writing (the "Clemson Settlement"). (R. 3190).[3] In the Clemson Settlement, Pampu accepted monetary consideration from the South Carolina Insurance Reserve Fund on behalf of Clemson and the other named defendants. (R. 3190). In exchange for this and other consideration from Clemson and the other named defendants, Pampu **agreed** that "Clemson University will reinstate the hearing board's decision of February 29, 2016 as upheld by the University Vice President of Student Affairs." (R. 19; R. 3191).

Following the execution of the Settlement Agreement, a disagreement arose between the Pampu and Clemson regarding the following issues: "(1) how Clemson would treat [his] disciplinary records internally; (2) how Clemson would respond to third-party requests inquiring about [his] disciplinary records; or (3) whether Clemson would disclose any settlement agreement when confronted with a public records information request for same and, if so, whether [his] identity would be safeguarded." *Doe v. Clemson Univ.*, 2019 WL 1383822, at *2. Despite the existence of the Clemson Settlement, Pampu and Clemson could not agree on these issues. *Id.* Clemson then filed a motion to enforce the Clemson Settlement, and Pampu filed an opposition and cross-motion to void the settlement. *Id.* Ultimately, Judge Coggins concluded that the Clemson Settlement signed following mediation was enforceable. *Id.* at *3–4. Pampu did **not** appeal this determination.

[3] Both Clemson and Pampu moved to file the Clemson Settlement under seal, which the federal district court granted. Accordingly, the Wingo Defendants agreed to request the trial court accept the Clemson Settlement filed under seal.

V. Pampu's civil conspiracy claim and the trial in this matter.

Before, during, and after the trial, Pampu and his counsel repeatedly stressed that the defamation cause of action was related to statements made *outside* of Clemson's Title IX process and the civil conspiracy claim was based on an alleged agreement by the Wingo Defendants and/or Mr. Gahagan to have Pampu removed from Clemson. (R. 1287, line 23 – 1288, line 5; R. 1292, lines 8-15; R. 1394, lines 12-19; R. 1416, lines 18-21; R. 2148, lines 4-7; R. 1115).

The parties proceeded to trial on March 21, 2022. (R. 1338). At the beginning of the trial, the trial court placed on the record the various rulings on motions in limine. (R. 1385, line 24 - 1386, line 1). With respect to the testimony of Ms. Smith and the Title IX proceedings at Clemson, the trial judge reaffirmed his prior ruling to exclude nearly all evidence related to the Title IX proceedings. (R. 1386, line 24 - 1388, line 2). Although the trial court acknowledged that the "result" of the Title IX process "is relevant," the trial court found that the process and findings could be confusing to the jury because the proceeding was held under different standards and rules. (R. 1387, lines 5-15). Based on this ruling, Pampu was allowed to introduce evidence that he was "suspended" from Clemson, but the Wingo Defendants were *not allowed* to present evidence of the administrative process, investigation, findings, and conclusions that led to the suspension, nor were they allowed to put into evidence the Clemson Settlement. (R. 1395, lines 6-10).

Towards the end of Pampu's opening statement at trial, counsel for Pampu discussed the issue of damages and linked the reputational damage based on defamation to Clemson's suspension of Pampu. More specifically, Pampu's counsel argued:

> To be clear, [Pampu's] civil conspiracy
> claim is based on the defendants' common plan to get
> him removed from Clemson University and removed from
> the fraternity. Meanwhile, [Pampu's] defamation
> claim is actually based on defendants' false
> statements to at least 20 other people calling him a

> rapist. Because of defendants' actions, [Pampu] will be required to disclose and self-report his removal from Clemson for the rest of his life whenever he applies to another school or applies to certain jobs. His dreams of becoming an orthodontist will never happen because of defendants' irreversible actions. His reputation has been forever tarnished by the defendants, peers at Clemson University, and all the other individuals that have defamed him.

(R. 1416, line 15 - 1417, line 4).

Notably, during cross-examination of Pampu, he acknowledged that Clemson never told him he could not return following his suspension. (R. 1571, lines 9-17). According to Pampu, he did not return because "there was some contingencies that, frankly, I didn't agree to." (R. 1571, lines 9-12). Pampu testified that he applied to nine dental schools but was not accepted into any. (R. 1463, lines 16-21). As of the time of the trial, Pampu worked as a salesman for Siemens Health Care. (R. 1464, lines 13-17).

At the end of the presentation of his case, Pampu called vocational expert Steven Shedlin, who testified that "but for the suspension from Clemson, [Pampu] would have been able to get into dental school." (R. 1939, lines 3-6). Mr. Shedlin further opined that Pampu sustained a loss of earning capacity throughout his life because he was unable to get into dental school due to the suspension from Clemson. (R. 1940, line 22 - 1941, line 13). The conclusion was based on the assumption that Pampu would have been able to become an orthodontist following completion of dental school. (R. 1947, line 20 - 1948, line 3).

In his dental school application, which indicates it was generated on January 4, 2021, Pampu provided the following explanation in response to the question of whether he was ever disciplined for student conduct violations by any college:

> On 10/24/15 I had consensual sex with a classmate. A false complaint was filed. Clemson improperly punished me with a 5-month suspension for Title IX

> violations. I filed a Federal lawsuit against Clemson for Due Process violations. I settled with Clemson. My transcript is unblemished. I'm engaged in a defamation lawsuit against my accuser. This incident led to concrete changes related to alcohol use and personal relationships. I spent 4 years at CofC without incident and focused on my studies.

(R. 3149 ("Dental School App.")).

VI. The Verdict and Post-trial Issues

The jury returned a verdict in favor of Pampu on his defamation claims against both Ms. Wingo and Mr. Wingo. (R. 1084-85). The jury also found in favor of Pampu on his civil conspiracy claims against Ms. Wingo but returned a verdict in favor of Mr. Wingo on the civil conspiracy claim asserted against him. (R. 1084-85). For the defamation claim against Ms. Wingo, the jury awarded $700,000 in actual damages and $450,000 in punitive damages. (R. 1084-85). For the defamation claim against Mr. Wingo, the jury awarded $230,000 in actual damages but no punitive damages. For the civil conspiracy claim against Ms. Wingo, the jury awarded Pampu $2,000,000 in actual damages. (R. 1084-85).

On April 4, 2022, Mr. and Ms. Wingo filed posttrial motions asserting various arguments for judgment notwithstanding the verdict as a matter of law, or, in the alternative, for a new trial absolute, or for remittitur of verdict. (R. 1094). The Wingo Defendants first argued that the trial court committed reversible error by admitting evidence of damages resulting from the Title IX investigation but not evidence of the Title IX process itself. (R. 1094-95). In a related argument, the Wingo Defendants claimed that the claims are barred by the doctrine of collateral estoppel based on the Title IX proceedings. (R. 1096-97).

The Wingo Defendants also argued that their statements were privileged from defamation and that the Pampu's claim for civil conspiracy fails as a matter of law because he failed to prove the essential elements of the claim. (R. 1097-1100). Finally, the Wingo Defendants argued in their

posttrial motions that the verdicts rendered for the defamation and civil conspiracy claim are inconsistent and/or constituted duplicative recovery. (R. 1100-1103).

The trial court granted the motion for JNOV on the civil conspiracy claim for multiple reasons, finding as follows:

> In the case before the Court, even considering the evidence in the light most favorable to [Pampu], the Court finds that [Pampu] failed to introduce evidence to establish these necessary elements for civil conspiracy. First, there was no evidence of an agreement or plan between the Defendant Erin Wingo and Defendant Gahagan. Although there was a report to Clemson University regarding the alleged incident, there was no evidence that this was based on any type of agreement or plan between these 2 defendants. Secondly, there was no evidence of the commission of any unlawful act by these defendants nor a lawful act by unlawful means. And finally, [Pampu] failed to provide any evidence of monetary damages resulting from the conduct of these defendants. Under the defamation claim, [Pampu's] damages can be presumed, but that does not apply to the conspiracy claim and [Pampu] must prove some type of actual damages. Here, [Pampu] presented testimony that because [Pampu] failed to get into dental school, he would not make as much money as he would have otherwise. However, under the South Carolina Rules of Evidence, [Pampu] was not able to establish any amount of damages sustained. So, there was no basis for the jury to determine the amount of damages sustained by [Pampu] without pure speculation. Further, the damages under the civil conspiracy cause of action were the same as the defamation cause of action and [Pampu] would not be entitled to a "duplicative recover[y]". *See Paradis*, 433 S.C. at 574.

(R. 6-7).

STANDARD OF REVIEW

When reviewing the trial court's ruling on a directed verdict or JNOV motion, this court must apply the same standard as the trial court "by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 27–28, 602 S.E.2d 772, 782 (2004) (citing *Strange v. South Carolina Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 445 S.E.2d 439 (1994)). "[A] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C.

565, 568, 503 S.E.2d 712, 713 (1998) (citing *Crossley v. State Farm Mutual Auto. Ins. Co.*, 307 S.C. 354, 357, 415 S.E.2d 393, 395 (1992)).

ARGUMENT

I. The trial court properly granted the JNOV on the civil conspiracy claim because it is factually nonsensical, and no evidence supports the ruling.

As an initial matter, the dismissal of the civil conspiracy claim should be affirmed because it does not factually make sense and no evidence supports it. As indicated over thirty times in his brief, Pampu's civil conspiracy claim is based on Ms. Wingo and Mr. Gahagan's alleged conspiracy to have Pampu "removed from Clemson." However, this claim fails for four primary factual reasons: (1) Pampu was never "removed" from Clemson; (2) there was no evidence at trial regarding what Ms. Wingo or Mr. Gahagan told Clemson; (3) there was no evidence at trial that Clemson's decision to suspend Pampu was based on statements by Ms. Wingo or Mr. Gahagan; and (4) Ms. Wingo and Mr. Gahagan did not have the power or ability to "remove" or suspend Pampu from Clemson.

A. Pampu was never "removed" from Clemson.

Although much of the record evidence relied on in this brief was wrongfully excluded at trial, *see* Wingo Initial Brief at pp. 27–39, the undisputed facts plainly show that Pampu was never removed from Clemson. In fact, despite Pampu and his counsel's insistence to the contrary, Pampu admitted at trial that he was permitted to return to Clemson under certain conditions. However, he was not willing to comply with those conditions. (R. 1571, lines 9-17). Instead, Pampu transferred from Clemson *before* the administrative case was finally resolved. (R. 1572, line 17 - 1573, line 14). This fact, standing alone, conclusively establishes that there is insufficient evidence to prove that Ms. Wingo and Mr. Gahagan conspired to have Pampu "removed from Clemson." He simply was not removed and could have returned.

Pampu's real grievance is that he believes he was wrongfully found responsible for committing sexual misconduct against Ms. Wingo, a Title IX violation. It is this violation that he subsequently reported on his Dental School Application, and it is this violation that Pampu claims prevented him from becoming an orthodontist. However, there was no evidence related to his Title IX violation presented to the jury, because Pampu fought hard to have it excluded. In addition to not being "removed" from Clemson, without the information surrounding the Title IX violation, it was impossible for Pampu to establish his civil conspiracy claim because the factual predicate for the claim was not presented to the jury.

B. There was no evidence at trial regarding what Ms. Wingo or Mr. Gahagan told Clemson.

Further, because the Clemson Title IX proceedings were excluded from evidence at the trial in this matter, there was no evidence before the jury regarding what Ms. Wingo or Mr. Gahagan told Clemson. Clemson's decision to suspend Pampu was necessarily based only on the information that was provided to Clemson in witness interviews and during the administrative hearing. (R. 2118, line 18 - 2120, line 16). The jury heard none of this. In other words, Pampu failed to prove what supposed "lies" Ms. Wingo and Mr. Gahagan told Clemson to lead to his allegedly improper suspension. It is impossible to establish that anyone conspired to have Pampu "removed from Clemson" without proving what was told by them to Clemson.

C. There is no indication that Clemson's decision to suspend Pampu was based on statements by Ms. Wingo or Mr. Gahagan.

Importantly, there is also no indication that statements or comments by Ms. Wingo or Mr. Gahagan led to Pampu's suspension. Instead, the suspension came after a full-blown investigation, which included interviews of twelve witnesses in addition to Pampu and Ms. Wingo, and an administrative hearing. (R. 2118-20). 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. (R. 2118-20).

For example, when the Investigators recommended that there was a preponderance of the evidence that Ms. Wingo was intoxicated, none of their supporting evidence was based on statements of rape. (R. 2416). Instead, the evidence was factual in nature and even included some of Pampu's own statements. (*Id.*). In fact, it is Pampu's own statements to the Investigators and at the hearing which make his civil conspiracy claim incomprehensible. On numerous occasions Pampu acknowledged that Ms. Wingo was drunk or incapacitated. He said that she was drunk when she arrived at the party. He said that she was on the "bad end of being drunk." He indicated that they were both drunk or intoxicated. He stated that he believed the sex would have occurred "***if***" Ms. Wingo was sober. Notably, the only issue that Clemson had to decide was whether Ms. Wingo was incapacitated when the admitted sexual encounter occurred. If she was, the incident was rape under Clemson's Anti-Harassment Policy and definitions. Pampu admitted that Ms. Wingo was drunk on multiple occasions.

Additionally, Pampu's testimony regarding his understanding of "incapacitation" and "consent" further supports the reasonable conclusion that his suspension from Clemson was based on much more than an alleged conspiracy. To reiterate, Pampu testified at the Clemson administrative hearing as follows:

> My understanding of incapacitation is where you really just cannot talk whatsoever. I know, from the school's standpoint, it has – it's different. But for everyone else, at least in my age, everyone in general, when it becomes something like that, you either can give consent or you can't. I mean, it's pretty clear, as I explained earlier, to me, what consent was. And she undoubtedly said yes.

(R. 2780, line 22 - 2781, line 9). **Thus, according to Pampu's own statements, his belief at the time of the incident was that a person is not incapacitated unless they "cannot talk whatsoever**." Pampu clearly told the hearing board during the Title IX proceedings that a verbal "yes" means "yes" irrespective of any other circumstances, because it is Pampu's stated opinion that if a person can merely speak, they are not incapacitated. Of course, this is incorrect.

Pampu's own statements and testimony during the Title IX investigation and hearing undermine his entire civil conspiracy theory. He was not suspended because of "lies" told by anyone or because of a conspiracy; he was suspended because he admitted having sexual intercourse with a drunk student. In his mind though, it was consensual because she could speak.

What's more, the jury was not presented with evidence to establish that Pampu's suspension from Clemson was caused by an agreement between the Defendants. It would be impossible for the jury to even consider this conclusion without evidence of the basis for the Clemson decision. Again, and crucially, the Clemson investigation, hearing, and appeal proceedings and statements made therein, were excluded from trial because Pampu moved to have them excluded. Because of this exclusion, there was no evidence at trial permitted regarding what Ms. Wingo or Mr. Gahagan told Clemson, and so those statements cannot serve as the factual basis for the civil conspiracy claim.

D. Ms. Wingo and Mr. Gahagan did not have the power or ability to "remove" or suspend Pampu from Clemson.

Lastly, Pampu' civil conspiracy claim is factually nonsensical and must fail because Ms. Wingo and Mr. Gahagan did not have the power or ability to "remove" or suspend Pampu from Clemson. Rather, this was a decision made by Clemson based on all the available information. To have successfully moved to exclude all the information Clemson relied on in suspending Pampu,

and then claiming the Defendants' conspiracy was that very suspension would allow Pampu to have his cake and eat it to.

II. The trial court properly granted Ms. Wingo's JNOV motion with respect to the civil conspiracy claim because Pampu failed to prove the essential elements of the claim.

"[A] plaintiff asserting a civil conspiracy claim must establish (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 Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021), *reh'g denied* (Aug. 18, 2021).

A. There was insufficient evidence presented to the jury to show Ms. Wingo and Mr. Gahagan entered into an agreement to have Pampu removed from Clemson.

"In order to 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." *Cowburn v. Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005) (quoting *First Union Natl. Bank of South Carolina v. Soden*, 333 S.C. 554, 575, 511 S.E.2d 372, 383 (Ct. App. 1998)). "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." *Moore v. Weinberg*, 373 S.C. 209, 228, 644 S.E.2d 740, 750 (Ct. App. 2007).

Pampu argues that there was evidence of an agreement in the form of the romantic nature of the relationship between Ms. Wingo and Mr. Gahagan and based on various text message exchanges between the two. This is insufficient to establish that an agreement exists. At most, these texts show that Ms. Wingo and Mr. Gahagan shared a common thought or opinion that

Pampu should be kicked out of Clemson. As explained by Ms. Wingo's counsel at the posttrial hearing, the evidence Pampu relies on "are actually opinions as to what should occur rather than indication of any agreement that had been reached by" Ms. Wingo and Mr. Gahagan. (R. 2362, lines 20-24). The mere existence of a romantic relationship and this shared opinion do not establish an agreement or a wrongful intent to injure Pampu. *See Pye v. Est. of Fox*, 369 S.C. 555, 568, 633 S.E.2d 505, 512 (2006), *overruled on other grounds by Paradis*, 433 S.C. 562, 861 S.E.2d 774.

Importantly, "the 'essential consideration' in civil conspiracy is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff." *Id.* at 567, 633 S.E.2d at 383 (quoting *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct. App. 1986)). Here, even if there was evidence of a combination, there is no evidence to suggest the primary purpose of the combination was to injure Pampu.

B. There was insufficient evidence presented to the jury to show the commission of an unlawful act or a lawful act by unlawful means.

Pampu argues that this element is met because Ms. Wingo's and Mr. Gahagn's actions constituted a tortious interference with a contract. (Pampu Initial Br. at p. 21). "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, 205, 662 S.E.2d 444, 449 (Ct. App. 2008) (quoting *Camp v. Springs Mortgage Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993)).

Pampu claims that Ms. Wingo and Mr. Gahagan intentionally procured the breach of his contract with Clemon. (Pampu Initial Br. at p. 22). However, there is no evidence in the record to explain or establish that the alleged contract between Pampu and Clemson was ever breached. *See*

First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 73, 451 S.E.2d 907, 913 (Ct. App. 1994) ("[W]ithout a breach of the underlying contract, there can be no recovery" for tortious interference with a contract.). Instead, and as previously mentioned, Pampu clearly testified at trial that he was permitted to return to Clemson under certain circumstances. (R. 1571, lines 9-17). He simply did not want to agree to the conditions. (*Id.*). Once again, Pampu's real complaint centers on having a Title IX violation on his record that he had to disclose to dental schools. Because of this, Pampu cannot establish that his contract with Clemson was ever breached, and in turn can therefore not establish that Ms. Wingo committed an unlawful act or a lawful act by unlawful means, because he was never expelled or otherwise "removed from Clemson."

Furthermore, Pampu has failed to cite any record evidence regarding the absence of justification element with respect to Ms. Wingo. Absence of justification means:

> conduct that is carried out for an improper purpose, such as malice or spite, or through improper means, such as violence or intimidation. A party is justified, however, when acting in the advancement of its legitimate business interests or legal rights. Furthermore, as long as some legitimate purpose or right exists, the improper purpose must predominate in order to create liability.

BCD LLC v. BMW Mfg. Co., LLC, 360 F. App'x 428, 435 (4th Cir. 2010) (applying South Carolina law) (citations omitted).

In arguing that Pampu established an absence of justification at trial, Pampu only cites to roughly a page of testimony given by *Mr. Gahagan* and text messages between Pampu and *Mr. Gahagan*. (Pampu Initial Br. at pp. 10, 20). In the text messages, *Mr. Gahagan* claims that he lied about the encounter. In the testimony at trial, *Mr. Gahagan* confirms the content of the text messages. Pampu cites no record evidence indicating or supporting an assertion that *Ms. Wingo* was acting with an absence of justification. That is because there is no record evidence supporting Pampu's statement in his brief that Ms. Wingo knowingly provided false statements to Clemson.

In fact, as previously discussed, there is no evidence whatsoever in the trial record regarding what statements Ms. Wingo provided to Clemson. Indeed, those statements were excluded at Pampu's request.

Moreover, any statements made by Ms. Wingo to Clemson during the Title IX process were in furtherance of her legal rights, and she is immune from liability for statements made during the Title IX process. More specifically, statements made within the Title IX process, such as statements to the Investigators and/or testimony at the administrative hearing, are privileged. *See Corbin v. Washington Fire & Marine Ins. Co.*, 278 F. Supp. 393, 400 (D.S.C. 1968) (recognizing absolute immunity for arbitration) aff'd, 398 F.2d 543 (4th Cir. 1968); *Hartman v. Keri*, 883 N.E.2d 774, 779 (Ind. 2008) (extending absolute immunity to a public university's proceeding for investigating sexual harassment complaints). As such, these statements cannot form the factual predicate of the defamation claim.

Finally, for the reasons discussed in more detail below with respect to causation, there are no resulting damages from the alleged tortious interference with the contract between Pampu and Clemson.

C. There was insufficient evidence presented to the jury to show the commission of an overt act in furtherance of the alleged agreement.

"An unexecuted civil conspiracy is not actionable. The conspiracy becomes actionable, however, once overt acts occur which proximately cause damage to the plaintiff." *Hackworth v. Greywood at Hammett*, LLC, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009) (citations omitted), *overruled on other grounds by Paradis*, 433 S.C. 562, 861 S.E.2d 774.

Pampu claims that the "false statements that Gahagan and Wingo provided to Clemson constitute the overt act(s) committed in further of their agreement to have Pampu removed from the school." (Pampu Initial Br. at p. 23). However, as described above, there was no evidence

presented to the jury regarding what Ms. Wingo or Mr. Gahagan told Clemson during the Title IX investigation, hearing, or appeals process. If the conspiracy or agreement reached by the Defendants was to have Pampu "removed from Clemson," then Pampu did not present any facts related to the overt acts that occurred to effectuate that agreement because he successfully argued for their exclusion.

D. There was insufficient evidence presented to the jury to show actual damages proximately resulting to Pampu.

Under a civil conspiracy claim, the injured party may recover the damages that flow from the conspiracy. *See Hackworth*, 385 S.C. at 115, 682 S.E.2d at 874. A plaintiff is entitled to recover only such damages that naturally and proximately result from the wrongful act or acts done in pursuance of the conspiracy and which directly result from it. *See id.*; 15A C.J.S. *Conspiracy* § 33; (R. 2301, lines 3-14). The element of actual damage that may be awarded are any damage or injury done to a person resulting from the conspiracy. 15A C.J.S. *Conspiracy* § 33; (R. 2301, lines 3-14). The existence or amount of damages cannot be left to conjecture, guess, or speculation. Damages must be susceptible of ascertainment with a reasonable degree of certainty. *See Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981); (R. 2301, line 15 - 2302, line 5).

The only alleged damages presented by Pampu with respect to the 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. These damages are both highly speculative and not proximately caused by the alleged concerted conduct for various reasons.

First, as discussed above, 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." It is highly probable that Clemson reached the decision to suspend Pampu based on a host of facts,

such as the statements or testimony of the numerous other witnesses or even the statements or testimony of Pampu himself.

Second, Pampu ignores the impact that his *admitted* Clemson policy violations may have had on his ability to gain admission to dental school. Pampu would have everyone believe that he would not have been found responsible for his Clemson policy violations but for the alleged lies told by the Defendants. However, Pampu *admitted* to drinking alcohol as a minor, a clear violation of Clemson policy, and his punishment was based, in part, on this admitted violation. Similarly, Pampu *admitted* to having sexual intercourse in a public location, which supported the separate disorderly conduct violation. His punishment was also based, in part, on this admitted violation. Thus, regardless of any details provided by Ms. Wingo related to the allegations of rape, Pampu admitted to violating numerous Clemson policies. The Dental School Application asks whether Pampu had "ever been disciplined for student conduct violations." (R. 3149). Pampu responded, "Yes." (*Id.*). However, in the explanation he failed to mention the alcohol or disorderly conduct violations. (*Id.*). These admitted violations break the casual chain of Pampu's claim that the Defendants conspired, as his admitted actions also contributed to the student conduct violations he received from Clemson.

Third, there is a substantial intervening and superseding cause related to Pampu's "removal from Clemson" and inability to gain admission to dental school – the Clemson Settlement. Pampu signed the Clemson Settlement in March 2018. (R. 3190). He applied to dental schools after executing this settlement, as he was applying for admission to dental school in the 2021–2022 academic school year. (R. 1969, lines 3-9; R. 3147). Critically, in the Clemson Settlement and in exchange for monetary consideration, Pampu agreed that "Clemson University will **reinstate** the hearing board's decision of February 29, 2016 as upheld by the University Vice President of

Student Affairs." (R. 19; R. 3190). Pampu accepted monetary compensation from Clemson in exchange from Clemson reinstating the Title IX violation. As such, subsequently being required to disclose the Title IX violations on his dental school application, and potentially not obtaining admission into dental school as a result, was not a harm caused by the Defendants, it was a bargained for exchange to which Pampu assented.

Fourth, Pampu's alleged damages are highly speculative and not ascertainable within a reasonable degree of certainty. Pampu's sole evidence that his "removal from Clemson" prevented him from getting into dental school was in the form of expert testimony from Mr. Shedlin. Without successfully contacting any of the dental schools to which Mr. Pampu applied, Mr. Shedlin reached the unreasonable and speculative conclusion that, but for Pampu's suspension from Clemson, he would have been able to get into one of the nine dental schools that he applied to. (R. 1940-41; R. 1947-48; R. 1949; R. 1964). Mr. Shedlin also admitted that he did not know whether any of the dental schools ever contacted Clemson or the College of Charleston. (R. 1973, line 23 - 1974, line 5). Mr. Shedlin also reached the unsupportable opinion that Pampu would have been able to get into an orthodontic residency, even though Mr. Shedlin did *not* even consider the statistics of how many dental students are able to obtain orthodontic residencies. (R. 1976-79). He further acknowledges that he made an *assumption* that Pampu would be able to become an orthodontist. (R. 1998, line 5-10). Mr. Shedlin's opinion that Pampu lost significant earning capacity due to having to Title IX violations on his records was based entirely on this assumption that Pampu would become an orthodontist. (R. 1998, lines 17-22).

Damages must be calculated to a reasonable degree of certainty. There was insufficient evidence presented to the jury from them to conclude, to a reasonable degree of certainty, that Pampu would have successfully become an orthodontist but for the alleged tortious conduct of the

alleged co-conspirators. Furthermore, the jury was not presented with a single monetary figure regarding Pampu's lost income. Instead, the jury was given extreme generalizations that Pampu would earn "significantly less" over his lifetime as a salesman as compared to an orthodontist. (R. 1959, lines 3-7). Thus, even if this Court is convinced that Pampu established to a reasonable degree of certainty that he would have been able to become an orthodontist, Pampu failed to prove any damages figure to a reasonable degree of certainty.

Pampu relies on *Mills v. S.C. State Ports Auth.*, 435 S.C. 213, 865 S.E.2d 910 (Ct. App. 2021), for the proposition that a jury does not need a specific calculation to reach a non-speculative damages amount. (Pampu Initial Br. at pp. 28–29). However, *Mills* is easily distinguishable from the present case. In *Mills*, the jury was left to determine the amount of lost wages experienced by the plaintiff. 435 S.C. at 228, 865 S.E.2d at 917. Critically, the jury was presented with testimony from the plaintiff that "he lost about $12,000 during the nine weeks he was out of work." *Id.* at 229, 865 S.E.2d at 918. The jury in *Mills* was easily able to use this figure to calculate a non-speculative damages figure for lost wages. Here, there were no monetary figures on which the jury could base their damages decision. Instead, the jury was left to merely speculate on what "significantly less" may mean.

Finally, and as discussed previously, Pampu's damages were not proximately caused by Ms. Wingo because she did not have the power or ability to "remove" him from Clemson. Rather, only the University has the power and ability to suspend or remove its students. Pampu cites *Pridgen v. Ward*, 391 S.C. 238, 705 S.E.2d 58 (Ct. App. 2010), for the proposition that Ms. Wingo and Mr. Gahagan can in fact be liable for engaging in a civil conspiracy to have Pampu removed from Clemson even though they did not have the ability to do so. (Pampu Initial Br. at pp. 23–24).

However, Pampu's reliance on *Pridgen* is misplaced, as the ultimate issue in this case does not appear to have been contested in *Pridgen*.

In *Pridgen*, a former associate warden brought suit against various South Carolina Department of Correction employees alleging, in part, that they conspired to have him terminated. 391 S.C. at 241, 705 S.E.2d at 60. The jury rendered a verdict against the SCDC employees, and the verdict was subsequently affirmed on appeal. However, it does not appear that the SCDC employee defendants argued that they could not be liable for the civil conspiracy because they did not have the power or authority to terminate the plaintiff. Instead, the defendant employees argued that they were acting within the scope of their employment, that the plaintiff was an employee-at-will and could therefore not recover, that there was not joint assent, and issues related to the tort claims act. Further, there was no description in *Pridgen* of the process engaged in, nor witnesses, or evidence considered, which led to the termination in that case.

Ms. Wingo's lack of causation argument is not addressed in *Pridgen*. Pampu's suspension from Clemson did not naturally result from a conspiracy to have him suspended. His suspension naturally resulted from a Title IX investigation, hearing, and appeals process in which numerous witnesses, included Pampu himself, provided statements, interviews, and live testimony. In other words, the decision to suspend Pampu was *made by Clemson* after a robust process. The suspension was not proximately caused by Ms. Wingo or Mr. Gahagan because they neither had the power nor authority to make the decision to suspend Pampu.

III. Recovery for civil conspiracy would be duplicative of Pampu's defamation claim.

The jury's verdicts should not be reinstated because the trial court correctly concluded that the damages claimed for Pampu's civil conspiracy cause of action were duplicative of those claimed in the defamation cause of action. (R. 7). "[Election of remedies] is a fundamental rule of

law in this state that there can be no double recovery for a single wrong." *Inman v. Imperial Chrysler-Plymouth, Inc.*, 303 S.C. 10, 13, 397 S.E.2d 774, 776 (Ct. App. 1990) (*citing Harper v. Ethridge*, 290 S.C. 112, 121, 348 S.E.2d 374, 279 (Ct. App. 1986)). *See Nichols v. State Farm Mutual Auto Insurance Co.*, 279 S.C. 336, 341, 306 S.E.2d 616, 619 (1983) (holding trial judge acted properly in striking verdict on one cause of action to prevent double recovery)).

Recently, in *Paradis v. Charleston County School District*, another case involving both defamation and civil conspiracy claims, the Supreme Court overruled a line of caselaw requiring that "special damages" be pled to support a civil conspiracy cause of action. 433 S.C. 562, 573, 861 S.E.2d 774, 779 (2021), reh'g denied (Aug. 18, 2021). In his concurrence in *Paradis*, Justice Kittridge explained, "[b]ecause a civil conspiracy claim was purportedly supported by special damages, some trial courts would avoid an election of remedies and permit a double recovery. *Today's rejection of a special damages requirement should restore a proper approach to election of remedies*. For one wrong, there is one recovery." *Id*. 433 S.C. at 577–78, 861 S.E.2d at 782 (J. Kittredge concurring) (emphasis added).

Under both his defamation and civil conspiracy causes of action, Pampu sought to recover only general damages for harm to his reputation, embarrassment, and mental distress. As such, the general damages of both causes of action are the same. They are inseparable from one another. Therefore, the alleged harm of the conspiracy is one and the same as the defamation itself. This is the very result of which Justice Kittridge warned in his concurrence in *Paradis* by affirming the well-established principle that "for one wrong, there is one recovery." 433 S.C. at 578, 861 S.E.2d at 782.

IV. Pampu's civil conspiracy claim is barred by estoppel and waiver.

A. Pampu's civil conspiracy claim is barred by the doctrine of collateral estoppel.

For the reasons stated in the Wingos' initial brief at pp. 19–28, which are incorporated by reference as if repeated herein, Pampu's civil conspiracy claim is barred by the doctrine of collateral estoppel. Namely, the issue of whether Ms. Wingo was incapacitated and unable to give consent to the sexual encounter on October 24, 2015, was actually litigated and directly determined in a contested case – the Clemson OCES proceeding. The issue was also necessary to support Clemson OCES's finding that Pampu committed "Sexual Misconduct." In short, because Pampu's civil conspiracy claim is premised on the factual assertion that Ms. Wingo lied to Clemson about being raped on October 24, 2015, but Clemson already determined that fact was true in a contested case, Pampu's claim for civil conspiracy is barred by collateral estoppel. Thus, this provides an alternative basis for this Court to affirm the trial court's order granting judgment notwithstanding the verdict on Pampu's civil conspiracy claim.

B. Pampu's civil conspiracy claim is barred by the doctrine of waiver.

Additionally, Pampu, civil conspiracy claim is barred by the doctrine of waiver based on the Clemson Settlement. "A waiver is a voluntary and intentional abandonment or relinquishment of a known right." *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992). "Generally, the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended." *Id.* at 344, 415 S.E.2d at 387–88. "The doctrine of waiver does not necessarily imply that the party asserting waiver has been misled to his prejudice or into an altered position." *Id.* at 344, 415 S.E.2d at 388. "[W]aiver require[s] a party to have known of a right, and known that the party was abandoning that right." *Strickland*, 375 S.C. at 85, 650 S.E.2d at 470–71.

In this case, Pampu waived any claims he had related to his suspension from Clemson when he signed the Clemson Settlement. It is these very Title IX findings that Pampu now claims have injured him. By accepting monetary payment in exchange for allowing the suspension to remain on his record, Pampu actively and affirmatively waived any right to damages related to that suspension. (R. 19; R. 3190).

Finally, the settlement and agreement by Pampu to allow the reinstatement of the Title IX findings breaks any alleged causation of any supposed conspiracy in any event. *See Stone v. Bethea*, 251 S.C. 157, 162, 161 S.E.2d 171, 173 (1968) ("When the [conduct] appears merely to have brought about a condition of affairs, or a situation in which another and entirely independent and efficient agency intervenes to cause the injury, the latter is to be deemed the direct or proximate cause, and the former only the indirect or remote cause.").

V. The trial court did not improperly invade the province of the jury by granting the motion for JNOV.

Pampu also argues that the trial court erred and invaded the province of the jury by granting the motions for JNOV after denying the motions for a directed verdict made on the same grounds. Pampu claims that, because a motion for JNOV is merely a renewal of the directed verdict motion, it should not be possible of a trial court to grant a motion for JNOV after denying a motion for directed verdict. However, Pampu ignores the language of the South Carolina Rules of Civil Procedure by claiming the trial court improperly changed its mind in deciding the same issues on two separate occasions. Rule 50(b) provides:

> Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury **subject to a later determination of the legal questions raised by the motion**.

(emphasis added).

Under Pampu's theory, a motion for JNOV is unnecessary and should not be granted under any circumstance. It appears to be Pampu's belief that if a directed verdict is denied, there is no basis to subsequently disturb the jury's findings. This is not the law. Instead, Rule 50(b) plainly indicates that, following a motion for a directed verdict, the issues submitted to the jury are still subject to legal determinations by the court. This is all that happened in this case, and Pampu's attempt to cast aspersions on the trial court's order granting JNOV by relying on the denial of the directed verdict motion is misplaced and should be rejected.

CONCLUSION

For the foregoing reasons, the trial court was correct in granting JNOV on the civil conspiracy cause of action and that ruling should be affirmed.

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