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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.

FINAL APPELLANT'S BRIEF OF APPELLANT-RESPONDENT PAMPU

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INTRODUCTION

During the trial in this matter, Appellant-Respondent Andrew Pampu, a former student at Clemson University, provided sufficient evidence to show that Respondents-Appellants Erin Wingo and Colin J. Gahagan engaged in a successful conspiracy to have him removed from Clemson. Pampu also proved that Wingo and Gahagan defamed him. At trial, Wingo and Gahagan moved for directed verdicts on Pampu's civil conspiracy and defamation claims. The Circuit Court denied these motions because it determined there was sufficient evidence in the record to submit these matters to a jury. The twelve-member jury returned unanimous verdicts of liability for civil conspiracy against Wingo and Gahagan and awarded Pampu a total of \$3,000,000 in damages apportioned as follows: \$2,000,000 against Wingo and \$1,000,000 against Gahagan. The jury also determined that Wingo and Gahagan were liable for defamation. Accordingly, the jury awarded Pampu \$700,000 in actual damages and \$450,000 in punitive damages as a result of Wingo's defamatory statements in addition to \$700,000 in actual damages and \$220,000 in punitive damages due to Gahagan's defamatory conduct. In reaching its decisions, the jury relied upon duly admissible fact witness testimony, expert witness testimony, and documentary evidence.

Despite its prior ruling denying Wingo and Gahagan's motions for a directed verdict and the undeniable existence of sufficient evidence to support the jury's findings with regard to Pampu's claim for civil conspiracy, the Circuit Court inexplicably granted the portions of Wingo and Gahagan's post-trial motions seeking a Judgment Notwithstanding the Verdict ("JNOV") on Pampu's civil conspiracy claim. Based on the evidence presented at trial, there was absolutely no basis for the Circuit Court to overturn the unanimous jury verdicts of liability for civil conspiracy against Wingo and Gahagan. Moreover, the Circuit Court's improper post-trial determination that the damages awarded for defamation and civil conspiracy are duplicative is belied by both the trial

record and the undeniable fact that the jury awarded Pampu different amounts for each cause of action. Indeed, the Circuit Court's decision to grant the JNOV motions is wholly incongruous with its denial of the directed verdict motions made at the trial. Instead of letting the properly-formed verdicts stand, the Circuit Court inappropriately invaded the province of the jury. Pampu now seeks redress at this Court to ensure that the proper verdicts of liability against Wingo and Gahagan for civil conspiracy are reinstated.

ISSUE ON APPEAL

- I. Did the Circuit Court err in granting the portions of Respondents-Appellants Erin Wingo and Colin J. Gahagan's Post-Trial Motions seeking a JNOV which overturned unanimous jury verdicts of liability for civil conspiracy against Wingo and Gahagan?

STATEMENT OF THE CASE

Pampu is a former student at Clemson University. R. p. 1428, lines 4-6, 13-17. Wingo and Gahagan are also former students at Clemson University. R. p. 1429, lines 14-16. Pampu asserts that Wingo and Gahagan defamed him by stating that Pampu had raped/sexually assaulted Wingo and that Wingo and Gahagan engaged in a civil conspiracy to have Pampu removed from Clemson. R. p. 1447, lines 18-25; p. 116, line 20-p. 118, line 15; p. 121, line 25-p. 122 line 13. At the trial in this matter, the Circuit Court denied Wingo and Gahagan's motions for a directed verdict with regard to, *inter alia*, Pampu's civil conspiracy claim. R. p. 2207, line 14-p. 2214 line 19. The jury returned verdicts of liability for defamation and civil conspiracy against Wingo and Gahagan.¹ R. p. 2314, lines 8-12, 16-22; p. 2314, line 25-p. 2315, line 2. The jury awarded Pampu \$700,000 in actual damages and \$450,000 in punitive damages as a result of Wingo's defamatory statements. R. p. 2314, lines 10-12. As a result of Wingo's involvement in the civil

¹ The jury also returned a verdict of liability for defamation by David Wingo, Erin Wingo's father. R. p. 2314, lines 13-15. The jury awarded Pampu \$230,000 in actual damages as a result of David Wingo's defamatory conduct. R. p. 2314, lines 13-15.

conspiracy, the jury awarded Pampu \$2,000,000 in actual damages. R. p. 2314, lines 19-22. The jury awarded Pampu \$700,000 in actual damages and \$220,000 in punitive damages as a result of Gahagan's defamatory conduct. R. p. 2314, lines 16-18. As a result of Gahagan's involvement in the civil conspiracy, the jury awarded Pampu \$1,000,000 in actual damages. R. p. 2314, line 25-p. 2315, line 2. Following post-trial motion practice, the Circuit Court incorrectly determined that Pampu failed to present sufficient evidence to prove his civil conspiracy claim and improperly overturned the jury's verdicts. R. pp. 6-7. The Circuit Court did not disturb the jury's verdicts of liability for defamation against Wingo and Gahagan.² R. pp. 7-11.

FACTUAL BACKGROUND

On September 10, 2015, the first day that Pampu and Wingo met, they engaged in an intimate physical encounter. R. p. 1430, lines 1-12; p. 1629, lines 5-7. At the time of this encounter, Pampu was friends with Gahagan, and Wingo was romantically entwined with Gahagan in a physically intimate relationship. R. p. 1430, lines 13-25; p. 1629, lines 15-17; p. 1755, lines 10-12, 19-21; p. 1836, line 18-p. 1837, line 5. Pampu and Gahagan were also pledge brothers rushing the Phi Delta Theta fraternity at that time. R. p. 1429, lines 2-6; p. 1430, lines 16-20. After the September 10, 2015 encounter, Wingo repeatedly initiated contact with Pampu during September and October of 2015 while also continuing to seek a relationship with Gahagan. R. pp. 3116-3117; pp. 3125-3129. Wingo eventually told Gahagan about her September 10, 2015 tryst with Pampu. R. p. 1431, lines 19-22. Wingo told Pampu that she felt guilty about their September 10, 2015 encounter. R. p. 3116. After Wingo told Gahagan about her September 10, 2015 encounter with Pampu, she informed Pampu that Gahagan refused to let her sleep over at his dorm

² The Circuit Court also declined to overturn the verdict of liability for defamation against David Wingo. R. pp. 9-11.

room, so she did not believe that he was “cool with” her rendezvous with Pampu. R. p. 3116. Wingo also told another friend that Gahagan was “furious with” Pampu because of the September 10, 2015 encounter. R. p. 3126. Wingo also told that same friend that Gahagan was not mad at her; rather, he was mad at Pampu. R. p. 3127.

On the evening of October 24, 2015, Pampu’s fraternity hosted a party at its off-campus house, nicknamed the Compound, and Pampu, Gahagan, and Wingo were in attendance. R. p. 1433, line 25-p. 1434, line 2; p. 1434, line 23-p. 1435, line 17. Upon her arrival at the party on October 24, 2015, Wingo went to find Gahagan. R. p. 2017, lines 16-24. After finding and speaking to Gahagan, Wingo became upset because Gahagan blew her off and told her to find somebody else, specifically Pampu. R. p. 1644, lines 19-23; p. 2017, line 25-p. 2018, line 15. Wingo then went to find Pampu. R. p. 1645, lines 5-9; p. 2072, line 21-p. 2073, line 3. After locating Pampu, Wingo went up to him and gave him a hug and a kiss on the lips in front of several people. R. p. 2073, lines 4-9. Wingo and Pampu eventually absconded to a more private location and engaged in a consensual sexual encounter. R. p. 1438, line 6-p. 1446, line 7. Shortly after this consensual sexual encounter had ended, Wingo began talking to Pampu about Gahagan, specifically asking why Gahagan did not love her and expressing disappointment with that fact. R. p. 1446, lines 15-21.

After her consensual sexual encounter with Pampu, Wingo sat on the front steps of the Compound and began crying and asking why Gahagan did not love her. R. p. 2021, line 2-p. 2022, line 25; p. 2073, lines 10-17. Wingo was upset because she had “messed up the plan” to go home with Gahagan that evening. R. p. 1654, lines 1-15. She also stated that Gahagan was going to hate her. R. p. 2176, lines 16-19. Wingo did not mention Pampu while she was lamenting her unrequited love for Gahagan on the steps of the Compound immediately following the encounter,

nor did she offer any indication that she had just been raped or sexually assaulted. R. p. 1655, lines 10-14; p. 2023, lines 3-5; p. 2066, lines 8-15. Wingo also texted Gahagan, who by that point had left the Compound. R. pp. 3118-3121.

During the car ride from the Compound back to her dorm, Wingo continued to cry about Gahagan, stating that he did not love her, but she never mentioned Pampu. R. p. 2073, lines 18-25; p. 2075, lines 1-13; p. 2199, lines 18-25. During the car ride, Wingo again stated that Gahagan was going to hate her. R. p. 2176, lines 20-23. When Wingo returned to her dorm following her consensual sexual encounter with Pampu, she told her friends that Gahagan was going to hate her, was not going to forgive her, and did not love her. R. p. 2176, line 24-p. 2177, line 8. She also told her RA that she was upset in part because she had been stood up at a party that she attended. R. p. 2085, lines 8-13. During her conversation with her RA, Wingo did not assert that she had been raped or sexually assaulted. R. p. 2085, line 24-p. 2086, line 5. Prior to going to sleep that evening, Wingo exchanged numerous hostile text messages with Gahagan. R. pp. 3118-3121.

After his sexual encounter with Wingo, Pampu sent a private text message to one of his pledge brothers, Jonathan Stoddart, informing Stoddart that he had sex with Wingo. R. p. 1530, lines 5-22; p. 1612, lines 18-21. Unbeknownst to Pampu, Stoddart took a screenshot of this private text message and sent it to a GroupMe chat that included the members of the fraternity pledge class, including Gahagan. R. p. 2195, lines 18-24. After receiving the GroupMe message from Stoddart, Gahagan deduced that Wingo had sex with Pampu on the evening of October 24, 2015. R. p. 1807, lines 8-25.

On October 25, 2015 at 8:18 a.m., Wingo sent a text message to Gahagan stating, in part, “But when I tell you I love you, I mean it,” and “I want you to tell me to be yours and to care about what I do, I want that too. I want to be yours and only yours, and you won’t ask me and I don’t

know why.” R. p. 1664, lines 2-12; pp. 3122-3123.³ At 9:24 a.m. on that same day, Wingo sent another text message to Gahagan stating, in part, “All I want is you and that’s all I ever wanted since being here.” R. pp. 3122-3123; p. 1664, lines 20-25. She followed this up with another text message to Gahagan at 9:28 a.m. that stated, in part, “I cried over you all last night.” R. pp. 3122-3123; p. 1665, lines 1-7. Gahagan did not respond to these messages from Wingo until 10:55 a.m., when he said, “Not the time to say I love you. I’m going to the Compound to clean now. We’ll talk when I get back.” R. pp. 3122-3123; p. 1665, lines 18-23. During her text message exchange with Gahagan on the morning of October 25, 2015, Wingo never told Gahagan that she had been raped or sexually assaulted the previous evening. R. pp. 3122-3123; p. 1665, line 24-p. 1666, line 3; p. 1765, lines 19-24.

On October 25, 2015 at 10:04 a.m., before she had spoken with anyone about her sexual encounter with Pampu, Wingo sent a text message to Pampu, pleading, “do not tell [Gahagan] what happened,” demonstrating a clear recollection of her sexual encounter with Pampu the previous evening. R. p. 3124; p. 1447, lines 14-17; p. 1667, lines 11-13. Significantly, her concerns focused solely on Gahagan finding out that she had engaged in sexual intercourse with Pampu; she did not express any concern that the encounter was not consensual. R. p. 3124; p. 1447, lines 14-17.

Later that morning at approximately 11:30 a.m., non-party witness Jami Hafner arrived at Wingo’s dorm room. R. p. 2050, lines 9-16. At the time Hafner arrived at Wingo’s dorm room, Wingo still had not spoken with Gahagan about the events of the prior evening. R. p. 2054,

³ The text messages included in Plaintiff’s Trial Exhibit 5 are timestamped using Universal Coordinated Time (UTC). UTC is four hours ahead of Eastern Daylight Time and five hours ahead of Eastern Standard Time. As an example, a message with a timestamp of 11:00 a.m. UTC would have been sent at 7:00 a.m. EDT or 6:00 a.m. EST. At the time the messages reflected in Plaintiff’s Trial Exhibit 5 were sent, the east coast of the United States was observing EDT.

lines 12-25. According to Hafner, Wingo was upset because she had sex with Pampu instead of Gahagan the prior evening. R. p. 2050, lines 20-22; p. 2051, lines 12-24. During her conversation with Hafner on October 25, 2015, Wingo did not say that Pampu raped or sexually assaulted her. R. p. 1669, lines 11-15; p. 2052, lines 7-14.

Later that evening at some point between 5:00 p.m. and 5:30 p.m., Gahagan arrived at Wingo's dorm room. R. p. 1669, lines 16-20; p. 1766, lines 10-17. When Gahagan arrived, he showed Wingo the GroupMe message from Stoddart to the fraternity pledge class. R. p. 1670, lines 2-10; p. 1766, lines 18-22. After seeing the GroupMe message, Wingo did not assert that she had been raped or sexually assaulted. R. p. 1766, line 18-p. 1767, line 8. She did, however, for the first time and contrary to all of her previous representations, claim that she did not remember much from the previous night. R. p. 1669, lines 21-25; p. 1829, lines 9-14. In response, Gahagan told Wingo that if she did not remember what occurred with Pampu the previous evening, then it was rape. R. p. 1674, lines 1-4. Gahagan's use of the word "rape" was the first time that term was used to describe Wingo's sexual encounter with Pampu. R. p. 1674, lines 7-15. Wingo did not start using the word "rape" to describe her sexual encounter with Pampu until two days after her October 25, 2015 in-person conversation with Gahagan. R. p. 1748, lines 3-8. Indeed, later in 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. R. p. 1791, lines 21-25; p. 3136.⁴

⁴ The text messages included in Plaintiff's Trial Exhibit 15 are timestamped using Universal Coordinated Time (UTC). UTC is four hours ahead of Eastern Daylight Time and five hours ahead of Eastern Standard Time. As an example, a message with a timestamp of 11:00 a.m. UTC would have been sent at 7:00 a.m. EDT or 6:00 a.m. EST. At the time the messages reflected in Plaintiff's Trial Exhibit 15 were sent, the east coast of the United States was observing EDT.

On October 27, 2015, after hearing Pampu's recounting of his sexual encounter with Wingo, Gahagan told Wingo that Pampu was "not a criminal, but he still did make an extreme unforgivable mistake." R. p. 1770, lines 8-21; p. 3130.⁵ On that same day, an anonymous report was made to Clemson regarding Pampu's sexual encounter with Wingo. R. p. 1572, lines 12-16. Also on October 27, 20215, Wingo attended a meeting with Clemson to discuss her sexual encounter with Pampu. R. p. 1676, line 22-p. 1677, line 1; p. 1720, line 19-1721, line 7. According to Wingo, she "cried throughout" this initial meeting, falsely indicating to Clemson that Pampu had sexually assaulted her even though she knew that the encounter was consensual. R. p. 1721, lines 10-11.

Wingo and Gahagan shared a desire to remove Pampu from Clemson, and they utilized the Clemson disciplinary process to achieve that goal. R. p. 1698, line 5-p. 1699, line 1. During a conversation that occurred on November 16, 2015, while the Clemson disciplinary process was ongoing, Gahagan told Wingo that they were "One step closer to him being gone," referring to having Pampu removed from Clemson. R. p. 1796, line 10-p. 1797, line 1; p. 3138.⁶ Gahagan also told Wingo, "Well you have four chances in the school to get what you want. Then you have criminal. Unless you decide criminal sooner is the best option." R. p. 3138. During their conversation, Wingo told Gahagan, "[H]alf of me wants to have him expelled and throw his ass in

⁵ The text messages included in Plaintiff's Trial Exhibit 10 are timestamped using Universal Coordinated Time (UTC). UTC is four hours ahead of Eastern Daylight Time and five hours ahead of Eastern Standard Time. As an example, a message with a timestamp of 11:00 a.m. UTC would have been sent at 7:00 a.m. EDT or 6:00 a.m. EST. At the time the messages reflected in Plaintiff's Trial Exhibit 10 were sent, the east coast of the United States was observing EDT.

⁶ The text messages included in Plaintiff's Trial Exhibit 16 are timestamped using Universal Coordinated Time (UTC). UTC is four hours ahead of Eastern Daylight Time and five hours ahead of Eastern Standard Time. As an example, a message with a timestamp of 11:00 a.m. UTC would have been sent at 7:00 a.m. EDT or 6:00 a.m. EST. At the time the messages reflected in Plaintiff's Trial Exhibit 16 were sent, the east coast of the United States was observing EST.

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.” R. p. 3138. Gahagan later told Wingo, in reference to Pampu, “There's no way this kid can stay at this school. It's honestly impossible.” R. p. 3139; p. 1798, lines 10-12. Gahagan further explained to Wingo, “He's gone Erin. It's not gonna be possible for him to stay,” once again referring to Pampu. R. p. 3139; p. 1798, lines 16-19.

At the same time that Gahagan was scheming with Wingo to have Pampu removed from Clemson, Gahagan was pretending to be Pampu's friend. R. p. 1454, line 15-p. 1455, line 4. In fact, on November 12, 2015, Gahagan told Pampu, “I know the kind of kid you are. I know you would never do that.” R. p. 3134. In using the term “that,” Gahagan was referring to rape. R. p. 1794, lines 11-18. In spite of this representation and with full knowledge that the sexual encounter giving rise to the Clemson disciplinary process was consensual, both Wingo and Gahagan provided false testimony at the Clemson disciplinary hearing that resulted in Pampu's removal from the university. R. p. 1787, lines 2-4; p. 1787, line 22-p. 1789, line 2; p. 3135.

It is clear that the false statements Wingo and Gahagan provided to Clemson during the disciplinary process initiated by the October 27, 2015 report led to Pampu's removal from Clemson. R. p. 1456, lines 2-3; p. 1461, lines 6-11; p. 1586, lines 7-14, 24-25. The text messages exchanged between Wingo and Gahagan on November 16, 2015 acknowledge and relish the impact their false statements will have on Pampu's continued attendance at Clemson. R. p. 3137 (Gahagan telling Wingo, “One step closer to him being gone,”); p. 3138 (Wingo noting that she was hoping Pampu would be expelled); and p. 3139 (Gahagan stating in response to Wingo's desire to have Pampu expelled, “There's no way this kid can stay at this school. It's honestly impossible.”). Moreover, in January 2017, Gahagan sent a series of text messages to Pampu in which he admitted that he and Wingo lied in order to have Pampu removed from Clemson,

acknowledged that Pampu's sexual encounter with Wingo was consensual, and admitted that Pampu was innocent. R. p. 3135; p. 1787, lines 2-4; p. 1787, line 22-p. 1789, line 2. In this series of text messages, Gahagan explicitly stated that he lied during the hearing that led to Pampu's removal from Clemson and implied that Wingo lied during that same hearing by noting, "Erin wanted to have sex that night." R. p. 1788, line 5-6; p. 3135.

PROCEDURAL HISTORY AND TRIAL COURT RULINGS

Pampu commenced his Circuit Court action on January 15, 2017, in Pickens County alleging claims of (1) defamation, (2) intentional infliction of emotional distress, (3) civil conspiracy, and (4) abuse of process. R. pp. 31-71. At the time of trial, only Pampu's defamation and civil conspiracy claims remained. R. p. 1447, lines 18-25; p. 1453, line 20-p. 1455, line 15; p. 1458, line 25-p. 1459, line 13.

This matter was tried before a jury in Pickens County between March 21, 2022 and March 25, 2022. R. p. 1338. At the close of Pampu's case-in-chief, Wingo and Gahagan moved for directed verdicts on Pampu's civil conspiracy and defamation claims, and the Circuit Court entertained extensive oral argument on these issues. R. p. 2127, line 23-p. 2153, line 7. At that time, the Circuit Court denied the motions for a directed verdict with regard to Pampu's defamation cause of action and took the motions for a directed verdict with regard to the civil conspiracy claim under advisement. R. p. 2153, line 3-7. At the close of evidence, Wingo and Gahagan renewed their motions for a directed verdict on Pampu's civil conspiracy claim. R. p. 2207, line 14-p. 2214, line 19. After hearing extensive oral argument, the Circuit Court denied the motions for a directed verdict and submitted the matter of whether Wingo and Gahagan engaged in a conspiracy to remove Pampu from Clemson to the jury for consideration. R. p. 2207, line 14-p. 2214, line 19.

In charging the jury, the Circuit Court correctly laid out the elements of civil conspiracy:

a plaintiff asserting a civil conspiracy claim must establish four elements: The combination or agreement of two or more persons; to commit an unlawful act or a lawful act of an unlawful means; together with the commission of an overt act in furtherance of the agreement; and damages resulting to the plaintiff.

R. p. 2300, lines 2-8. The Circuit Court also properly instructed the jury that a “conspiracy may be inferred from the nature of the acts, relationship of the parties, and the interest of alleged conspirators and other circumstances.” R. p. 2300, lines 12-15. The Circuit Court’s instruction to the jury continued as follows:

Civil conspiracy is an act which is by its very nature covert and clandestine and usually not susceptible of proof by direct evidence. Concert of action, amounting to a conspiracy, may be shown by circumstantial as well as direct evidence. In order to establish a civil conspiracy, direct or circumstantial evidence must be produced from which one may reasonably infer the joint assent of the mind of two or more parties to the prosecution of the unlawful enterprise.

R. p. 2300, lines 15-24.

With regard to damages related to a cause of action for civil conspiracy, the Circuit Court informed the jury that “the injured party may recover the damages that flow from the conspiracy” and that “any damage or injury done to person resulting from the conspiracy” is a properly awarded damage. R. p. 2301, lines 7-8; p. 2301, lines 13-14. The Circuit Court further explained, “Future damages need not be proved to a mathematical certainty and often must be approximated.” R. p. 2301, lines 15-17. The Circuit Court then went on to note the following:

Neither the existence, causation nor amount of damages can be left to conjecture, guess, or speculation. Damages must be proved with a reasonable degree of certainty. The evidence presented by the plaintiff must enable you, the jury, to determine what amount is fair, just, and reasonable.

R. p. 2301, line 21-p. 2302, line 2.

Following several hours of deliberations, the twelve-person jury returned verdicts finding Wingo and Gahagan liable for, *inter alia*, civil conspiracy. R. p. 2314, lines 19-22; p. 2314, line 25-p. 2315, line 2. With regard to this finding of liability, the jury awarded Pampu \$2,000,000 for

Wingo's participation in the conspiracy and \$1,000,000 for Gahagan's participation in the conspiracy, for a total award of \$3,000,000. R. p. 2314, lines 19-22; p. 2314, line 25-p. 2315, line 2.

On March 30, 2022, Gahagan filed a post-trial motion seeking, *inter alia*, a JNOV finding related to Pampu's civil conspiracy claim. R. pp. 1086-1093. Gahagan asserted that "There is no proof that C. J. Gahagan and Erin Wingo acted in such a manner to cause harm to Andrew Pampu by having him expelled or suspended from Clemson." R. p. 1091. With regard to the issue of the commission of an unlawful act or a lawful act by unlawful means, Gahagan argued as follows:

If the unlawful act concerns the asserted defamatory statements, there is no proof that the statements led to the Plaintiff's expulsion or suspension. With regard to a lawful act by unlawful means, this could only apply to the testimony given by C. J. Gahagan and Erin Wingo during the course of a Title IX hearing. However, any attack on this testimony to the effect that it was perjury is contrary to the rule regarding intrinsic fraud and, therefore, should not be considered.

R. pp. 1091-1092. Gahagan then went on to mischaracterize the admissible testimony offered by Pampu's expert and incorrectly asserted that Pampu needed to elect his remedy because "the general damages sought through the civil conspiracy cause of action are for the same damage to reputation, embarrassment, and mental distress as is available through the action for defamation." R. p. 2093.

Pampu filed his response to Gahagan's Post-Trial Motion on April 14, 2022. R. pp. 1130-1147. In his response, Pampu identified text messages indicative of a common plan between Wingo and Gahagan that were admitted as evidence at trial. R. p. 1141. He also refuted Gahagan's analysis on the issue of intrinsic fraud and explained that it was proper for the jury to consider the statements made by Wingo and Gahagan to Clemson that resulted in Pampu's removal. R. pp. 1141-1142. He further highlighted the text messages that he received from Gahagan in January 2017 where Gahagan admitted that he and Erin lied to Clemson in order to

have Pampu removed from the university. R. p. 1142. Pampu also detailed how the jury's verdicts for civil conspiracy and defamation awarded damages based on two distinct sets of facts, thus negating any need to elect a remedy. R. pp. 1142-1145. Pampu further identified the admissible testimony offered by his expert to support his claim for damages related to civil conspiracy. R. p. 1145.

On April 4, 2022, Wingo filed a post-trial motion seeking, *inter alia*, a JNOV finding related to Pampu's civil conspiracy claim. R. pp. 1094-1109. Wingo argued as follows:

At trial, Plaintiff failed to introduce evidence of an agreement between Gahagan and Erin Wingo. This is fatal to any claim of civil conspiracy. There was no meeting, no letter, no text, no email indicating an agreement between these Defendants to conspire to unlawfully defame the Plaintiff. Neither Erin nor Gahagan initially reported the allegation to Clemson. There is no evidence that either requested, or even encouraged, the report to be made. Therefore, there was no evidence introduced that the agreement was to commit an unlawful act or a lawful act by unlawful means. Without this evidence, there is no claim for civil conspiracy and Erin Wingo is entitled to a judgment in her favor notwithstanding the verdict.

R. pp. 1099-1100. Wingo also asserted that the civil conspiracy verdicts awarded against her and Gahagan were inconsistent because they were for different amounts. R. pp. 1100-1101. She further argued that the damages awarded by the jury for Pampu's defamation and civil conspiracy claims were duplicative, thus requiring the election of remedies. R. pp. 1101-1103. While it was not part of the JNOV portion of her Post-Trial Motion, Wingo also maintained that the damages awarded by the jury were speculative. R. p. 1104.

Pampu filed his opposition to Wingo's JNOV Motion on April 14, 2022. R. pp. 1110-1129. Pampu corrected Wingo's improper characterization of his civil conspiracy claim, explaining that his civil conspiracy claim was based on Wingo and Gahagan's plan to have him removed from Clemson. R. p. 1116. He then went on to identify specific text messages between Wingo and Gahagan indicating a common plan to have Pampu removed from Clemson, thus unlawfully

interfering with the contract that existed between Pampu and Clemson. R. pp. 1116-1117. Pampu also noted that there is no legal basis for Wingo's claim that the verdicts against her and Gahagan are void for inconsistency. R. pp. 1117-1118. Pampu explained that his civil conspiracy claim and defamation claim are based on two different sets of facts – the civil conspiracy claim is based on the common plan entered into by Wingo and Gahagan to offer false statements to Clemson in order to have Pampu removed from the school, while the defamation cause of action is based on statements that Wingo and Gahagan made to individuals outside of the Clemson process that damaged his reputation. R. pp. 1118-1120. Accordingly, Pampu established that there is no need for him to elect his remedy. R. pp. 1118-1120. Finally, Pampu identified admissible expert testimony that permitted the jury to issue a non-speculative damages award with regard to the civil conspiracy verdict. R. p. 1120.

The Circuit Court filed its Order on Post Trial Motions on July 11, 2022. R. pp. 4-13. In granting the portion of Respondents-Appellants' JNOV Motion related to the jury's finding of liability for civil conspiracy, the Circuit Court offered the following faulty analysis:

[T]he Court finds that the Plaintiff 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, the Plaintiff failed to provide any evidence of monetary damages resulting from the conduct of these defendants. . . . Here, the Plaintiff presented testimony that because the Plaintiff 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, Plaintiff 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 the Plaintiff without pure speculation.

R. pp. 6-7. The Circuit Court also incorrectly asserted that the damages claimed for Pampu's civil conspiracy cause of action were duplicative of his defamation claim. R. p. 7. This appeal followed.

STANDARD OF REVIEW

This Court has clearly established the following standard of review when facing appeals related to motions for JNOV:

When ruling on a JNOV motion, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. This court must follow the same standard. If more than one reasonable inference can be drawn or if the inferences to be drawn from the evidence are in doubt, the case should be submitted to the jury

Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 325 734 S.E.2d 177, 180 (Ct. App. 2012) (internal quotations and citations omitted); *see also RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331-332, 732 S.E.2d 166, 171 (2012) (same); *Hunter v. Staples*, 335 S.C. 93, 105, 515 S.E.2d 261, 267 (Ct. App. 1999) (same); *Watts v. Chastain*, No. 2019-001514, 2022 WL 17171097 at *2 (S.C. Ct. App. Nov. 23, 2022) (same).

This Court has further explained as follows:

In ruling on a motion for judgment notwithstanding the verdict, the trial court must view the evidence and inferences therefrom in the light most favorable to the nonmoving party and must deny the motions if either the evidence yields more than one reasonable inference or its inferences are in doubt. **The verdict will be upheld if there is any evidence to sustain the factual findings implicit in the jury's verdict.**

Shupe v. Settle, 315 S.C. 510, 515, 445 S.E.2d 651, 654 (Ct. App. 1994) (emphasis added). As noted by this Court, "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 v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000) (citing *Smalls v. South Carolina Dep't of Educ.*, 339

S.C. 208, 528 S.E.2d 682 (Ct. App.2000)) (emphasis added); *see also Hunter*, 335 S.C. at 105, 515 S.E.2d at 267-268 (same); *Watts*, 2022 WL 17171097 at *2 (same).

As the Supreme Court of South Carolina has explained, “A motion for a JNOV is merely a renewal of the directed verdict motion.” *RFT Mgmt. Co.*, 399 S.C. at 331, 732 S.E.2d at 171. The Supreme Court has also noted 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.” *RFT Mgmt. Co.*, 399 S.C. at 332, 732 S.E.2d at 171.

ARGUMENT

I. PAMPU PRESENTED EVIDENCE SUFFICIENT TO SUSTAIN A FINDING OF LIABILITY FOR CIVIL CONSPIRACY

Pampu’s civil conspiracy claim against Gahagan and Wingo is based on their concerted effort to have Pampu removed from Clemson. To establish a claim for civil conspiracy, a plaintiff must prove: “(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.” *Paradis v. Charleston Cty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (S.C. 2021), *reh’g denied* (S.C. 2021). Sufficient evidence to support each and every prong of the *Paradis* standard was presented to the jury at the trial in this matter.

A. Evidence Of A Combination Or Agreement Between Wingo And Gahagan

Civil conspiracy “may be inferred from the nature of the acts committed, the relationship of the parties, the interests of the alleged conspirators, and other relevant circumstances.” *Pridgen v. Ward*, 391 S.C. 238, 246 705 S.E.2d 58, 63 (Ct. App. 2010) (internal quotations and citation omitted). In *Pridgen*, the respondent asserted that he had been fired as a result of concerted lies put forth by his co-workers for personal reasons. *Pridgen*, 391 S.C. at 241-242, 705 S.E.2d at 60-

61. The respondent maintained that “the relationship of the Appellants and the nature of the acts they committed are evidence of a conspiracy.” *Id.* at 247, 705 S.E.2d at 63. This Court agreed with the respondent, noting that “the evidence in the record creates more than one reasonable inference” of an agreement between the appellants. *Id.* In reaching this conclusion, this Court relied upon several forms of circumstantial evidence.

This Court noted that the appellants had a “motive to harm” the respondent based on the respondent’s refusal to support one appellant’s attempt to discredit another employee and the respondent’s acrimonious relationship with two of the appellants. *Id.* This Court also relied upon “testimony regarding meetings between the Appellants” where they discussed the interpersonal problems between the respondent and one of the appellants. *Id.* There was also evidence of correspondence between the appellants regarding the respondent and the conditions that the appellants reported to their mutual employer that led to the respondent’s termination. *Id.* Additionally, this Court noted that the fact that two of the appellants “had a professional friendship” and “ate lunch together several times a week” aided in showing the existence of a conspiracy. *Id.* In determining that the circuit court properly denied the appellants’ motion for a directed verdict and JNOV motion, this Court concluded

The jury could infer from the nature of the acts committed by the Appellants as well as the relationships and interests of the Appellants that they conspired to have [Respondent’s] employment terminated. Although the evidence presented was circumstantial, there was at least some evidence to the [sic] support the trial court’s denial of the Appellant’s motions.

Id. at 248, 705 S.E.2d at 64. Similarly, the jury in the instant matter was able to infer 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.

At the time of her sexual encounter with Pampu, Wingo was undeniably romantically connected to Gahagan. R. p. 1430, lines 21-25; p. 1630, lines 15-17; p. 1755, lines 10-12, 19-21;

p. 1836, line 18-p. 1837, line 5. Gahagan was clearly embarrassed at being cuckolded. Indeed, he swiftly confronted Wingo after her encounter with Pampu became public knowledge in his pledge class. R. p. 1670, lines 2-10; p. 1766, lines 18-22. Wingo told anyone who would listen that she was afraid that her sexual encounter with Pampu would irreparably harm any possibility of a love connection with Gahagan. R. p. 1446, lines 15-21; p. 1654, lines 1-15; p. 2021, line 2-p. 2022, line 25; p. 2073, lines 10-17; p. 2073, lines 18-25; p. 2075, lines 1-13; p. 2176, line 16-p. 2177, line 8; p. 2199, lines 18-25. Indeed, Wingo admitted that, at the time of her sexual encounter with Pampu, she wanted a more serious relationship with Gahagan. R. p. 1668, lines 18-19. Her concern that this would not be possible after the October 24, 2015 dalliance was obviously valid, as Gahagan was “furious” after Wingo merely kissed Pampu in September of 2015. R. p. 3126. In order to solve these intractable issues, Gahagan and Wingo came together and developed a narrative that would allow them to save face and preserve a potential relationship. Wingo feigned incapacitation in an attempt to excuse her behavior. R. p. 3124; p. 1447, lines 14-17; p. 1667, lines 11-13; p. 1669, lines 21-25; p. 1829, lines 9-14. Gahagan, in an attempt to wipe away the stain of being a cuckold, asserted that if Wingo did not remember the encounter, then she was raped. R. p. 1674, lines 1-4.

The close relationship between Gahagan and Wingo continued after Wingo had sex with Pampu. The clearest example of this continued closeness is the fact that Gahagan attended all of Wingo’s therapy sessions after her supposed assault. R. p. 1816, lines 4-5. Due to their close relationship, Gahagan and Wingo had a common enemy – Pampu. The text messages exchanged between Gahagan and Wingo on November 16, 2015 indicate the existence of an agreement to have Pampu removed from Clemson. One message from Gahagan to Wingo stated, “One step closer to him being gone.” R. p. 3137. Gahagan also told Wingo, “Well you have four chances in

the school to get what you want. Then you have criminal. Unless you decide criminal sooner is the best option.” R. p. 3138. As part of this text message exchange, Wingo told Gahagan, “half 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.” R. p. 3138. Later in the conversation, Gahagan told Wingo, “There's no way this kid can stay at this school. It's honestly impossible,” referring to Pampu. R. p. 3139. Gahagan also explained to Wingo, “He's gone Erin. It's not gonna be possible for him to stay,” once again referring to Pampu. R. p. 3139. All of these messages were entered into evidence and available to the jury while they deliberated with regard to Pampu's civil conspiracy claim.

The above messages are more than sufficient to show that there was a combination or agreement between Wingo and Gahagan to have Pampu removed from Clemson. However, if there is any doubt that Gahagan and Wingo acted in concert to have Pampu removed from Clemson, such doubt is unquestionably extinguished by the series of text messages that Gahagan sent Pampu in January 2017. In those messages, Gahagan admitted that he and Wingo lied in order to have Pampu removed from Clemson. The jury heard live testimony from Gahagan confirming that he sent the following text messages to Pampu in January 2017:

- You're innocent. I lied in that hearing. Erin wanted to have sex that night. R. p. 1788, lines 5-6.
- I deleted texts from that night to prove she was fucking crazy. You're innocent. . . . You are innocent. R. p. 1788, lines 12-13, 16.
- You're innocent, Drew, and that comes from CJ, the man that lied. R. p. 1789, lines 1-2.
- Send these to your lawyer. Just don't call me into the hearing and leave me alone. You're welcome. That's all I ask. You're innocent, bud. R. p. 1788, lines 19-22.

The jury also received copies of the above-referenced text messages that Gahagan sent to Pampu in January 2017. R. p. 3135. Based on the foregoing, it is clear that there was at least some

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

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

In *Paradis*, the Supreme Court of South Carolina explicitly stated that a civil wrong constitutes an "unlawful act" for the purposes of evaluating a cause of action for civil conspiracy. *Paradis*, 433 S.C. at 571, n.6, 861 S.E.2d at 778, n.6. The Circuit Court acknowledged this finding from *Paradis* when it denied Wingo and Gahagan's directed verdict motions at the close of evidence. R. p. 2212, lines 5-16; p. 2214, lines 18-19. As detailed above, it is clear that Gahagan and Wingo had a plan to have Pampu removed from Clemson. Because their plan was successful, their actions constituted tortious interference with a contract. "The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages." *Vortex Sports & Ent., Inc. v. Ware*, 378 S.C. 197, 206, 662 S.E.2d 444, 449 (Ct. App. 2008). As described below, the evidence presented at trial was sufficient to satisfy all of the elements of tortious interference with a contract. Thus, there was no basis for disturbing the jury's determination that Wingo and Gahagan committed an unlawful act. *Pridgen*, 391 S.C. at 248, 705 S.E.2d at 64; *Welch*, 342 S.C. at 300, 536 S.E.2d at 419.

At the time Gahagan and Wingo formulated and executed their plan, Pampu had a contract with Clemson – if he paid tuition and complied with Clemson's academic and disciplinary policies,

then he would remain enrolled as a student. *See Carter v. Univ. of S.C.*, 360 S.C. 428, 432, n.4, 602 S.E.2d 59, 61, n.4 (Ct. App. 2004) (noting that “It is commonly held that a contract exists between a university and its students” and that “It is axiomatic that when a student enrolls in a college or university, pays his tuition and fees, and attends such school, the resulting relationship may reasonably be construed as being contractual in nature”) (internal quotations and citation omitted). Because they knew that Pampu was enrolled as a student at Clemson and they themselves were also students at Clemson, Gahagan and Wingo were aware of the existence of the contract that existed between Pampu and Clemson as they were concocting their scheme.

Gahagan and Wingo’s stated goal was to remove Pampu from Clemson. R. pp. 3137-3139. They were successful in achieving this goal, as Pampu was removed from Clemson as a result of their actions even though he had done nothing wrong. R. p. 1456, lines 2-3; p. 1461, lines 6-11; p. 1586, lines 7-14, 24-25. Thus, it is clear that they intentionally procured the breach of the contract that Pampu had with Clemson.

Wingo and Gahagan provided statements to Clemson that they knew were false in order to procure the breach, thus satisfying the absence of justification prong. R. p. 1788, lines 5-6; p. 1788, lines 12-13, 16; p. 1789, lines 1-2; 1788, lines 19-22; p. 3135. Finally, Pampu was clearly damaged, as the unwarranted interference with the contract caused him economic loss. As explained in more detail below, Pampu presented expert testimony establishing that the breach of his contract with Clemson caused by Wingo and Gahagan prevented him from becoming an orthodontist, resulting in a severe reduction in lifetime earnings. R. p. 1939, lines 4-6; p. 1939, line 8-p. 1940, line 2; p. 1940, line 22-p. 1941, line 4; p. 1959, lines 3-7; p. 2000, lines 12-18; *see also* Section I. D., *infra*. (detailing the damages that flowed from Wingo and Gahagan’s concerted action to have Pampu removed from Clemson).

The aforementioned actions constitute an unlawful act for the purposes of determining whether Wingo and Gahagan are liable for civil conspiracy. As noted by the Supreme Court of South Carolina, “unlawful” in the context of a civil conspiracy claim merely means “contrary to law” and is not limited to criminal conduct. *Paradis*, 433 S.C. at 571, n.6, 861 S.E.2d at 778, n.6. Because the jury heard testimony and reviewed exhibits indicative of Wingo and Gahagan’s tortious interference with the contract that existed between Pampu and Clemson, there was absolutely no basis for overturning the jury’s verdicts on this issue. See *Welch*, 342 S.C. at 300, 536 S.E.2d at 419 (“The jury’s verdict **will not be overturned if any evidence exists that sustains the factual findings** implicit in its decision.”) (emphasis added).

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

The evidence presented at trial clearly established that Gahagan and Wingo lied to Clemson in order to have Pampu removed from the university. The false statements that Gahagan and Wingo provided to Clemson constitute the overt act(s) committed in furtherance of their agreement to have Pampu removed from the school. Wingo and Gahagan are likely to assert that because they did not make the ultimate decision to remove Pampu from Clemson, they cannot be liable for engaging in a civil conspiracy against him. However, this Court’s decision in *Pridgen* forecloses any such argument by Wingo and Gahagan.

In *Pridgen*, the respondent’s co-workers conspired to have him removed from his position as the Associate Warden of Operations at the Lee Correctional Institution, but the actual termination of the appellant’s employment was carried out by the South Carolina Department of Corrections. See *Pridgen*, 391 S.C. at 241, 705 S.E.2d at 60 (noting that “On May 24, 2004, [Respondent] was fired by the South Carolina Department of Corrections (SCDC) from his position as the Associate Warden of Operations at the Lee Correctional Institution (Lee)” after

“SCDC charged [Respondent] with gross misconduct and intentional improper behavior.”). Still, the jury found the respondent’s co-workers liable for civil conspiracy based on the evidence presented at trial showing that the respondent’s co-workers lied to their employer in order to have the respondent terminated. *Id.* at 243, 244 705 S.E.2d at 61, 62. During the trial, the circuit court denied the co-workers’ motion for a directed verdict, and their post-trial motions for a JNOV, a new trial absolute, and a new trial *nisi remittitur* were also denied. *Id.* at 243, 705 S.E.2d at 61. This Court affirmed those rulings, upholding the jury’s verdict of liability for civil conspiracy. *Id.* at 249, 705 S.E.2d at 64.

Thus, according to this Court’s well-established jurisprudence, Pampu is not required to show that Wingo and Gahagan made the decision to remove him from Clemson. Rather, he must simply show that their actions – that is, the false statements they made to Clemson – led to his removal. As detailed below, the evidence presented at trial was more than sufficient to support the jury’s finding that Wingo and Gahagan engaged in an overt act in furtherance of their agreement to have Pampu removed from Clemson.

An anonymous report regarding Wingo’s sexual encounter with Pampu was made to Clemson on October 27, 2015. R. p. 1676, line 22-p. 1677, line 1; p. 1720, line 19-p. 1721, line 7. While neither Wingo nor Gahagan made filed the complaint with Clemson, the evidence available to the jury clearly established that they participated in Clemson’s investigation. Notably, their participation in the Clemson process – meeting with Clemson and providing live testimony at a hearing – was voluntary. If they did not want to take part in the process, they could have simply declined to do so. Instead, Wingo and Gahagan freely and actively provided false information to Clemson in order to have Pampu removed from the school. Such actions are sufficient to support a finding of liability for civil conspiracy. *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 testified that she attended a meeting with Clemson on October 27, 2015 to discuss her sexual encounter with Pampu. R. p. 1676, line 22-p. 1677, line 1; p. 1720, line 19-p. 1721, line 7. According to Wingo, she “cried throughout” this initial meeting. R. p. 1721, lines 10-11. Thus, through her crocodile tears, Wingo gave Clemson the false impression that Pampu had sexually assaulted her. Other evidence presented to the jury further indicated that Wingo and Gahagan eagerly and willingly participated in the process that led to Pampu’s removal from Clemson. On November 16, 2015, while Clemson’s disciplinary process against Pampu was in full swing, Gahagan told Wingo that they were “One step closer to him being gone,” referring to Pampu’s removal from Clemson. R. p. 3137; p. 1796, line 10-p. 1797, line 1. Wingo then told Gahagan she wanted to have Pampu expelled. R. p. 3138. Gahagan responded by telling Wingo, “There’s no way this kid can stay at this school. It’s honestly impossible,” and “He’s gone Erin. It’s not gonna be possible for him to stay,” referring to Pampu. R. p. 3139; p. 1798, lines 7-19.

Moreover, the jury was indisputably provided with evidence sufficient to establish that Gahagan and Wingo provided false statements and information to Clemson during the disciplinary process to further their plan to have Pampu removed from the school. In January 2017, Gahagan explicitly told Pampu, “You’re innocent. I lied in that hearing.” R. p. 1788, lines 5-6; p. 3135. Gahagan also branded himself “the man that lied” and repeatedly proclaimed that Pampu was innocent. R. p. 1788, lines 5-6, 12-13, 16, 19-22; p. 1789, lines 1-2; p. 3135. He further told Pampu, “Erin wanted to have sex that night,” establishing that Wingo lied to Clemson about the

nature of her interaction with Pampu during the disciplinary process that led to Pampu's removal from the school. R. p. 1788, lines 5-6; p. 3135.

The aforementioned evidence clearly shows overt actions taken by Wingo and Gahagan in furtherance of their plan to have Pampu removed from Clemson. Accordingly, Pampu maintains that the jury was provided with explicit evidence of multiple overt acts undertaken by Wingo and Gahagan in furtherance of their conspiracy. Regardless, it cannot reasonably be disputed that the jury was provided with at least *some* evidence from which they could, at a bare minimum, infer that Wingo and Gahagan engaged in the overt act of providing false statements and information to Clemson in order to further their plan to have Pampu removed from the university. Either way, there was absolutely no basis for the Circuit Court to overturn the jury's factual finding on this issue. *See Welch*, 342 S.C. at 300, 536 S.E.2d at 419 ("The jury's verdict **will not be overturned if any evidence exists that sustains the factual findings** implicit in its decision.") (emphasis added); *Shupe*, 315 S.C. at 515, 445 S.E.2d at 654 (holding that a jury's "verdict will be upheld if there is any evidence to sustain the factual findings implicit in the jury's verdict."); *see also Pridgen*, 391 S.C. At 248, 705 S.E.2d at 64 (upholding a jury verdict of civil conspiracy based on circumstantial evidence).

D. Evidence Of Damages Proximately Resulting To Pampu

Pampu's expert witness, Steven Shedlin, stated that his "opinion is that but for the suspension from Clemson, that Pampu would have been able to get into dental school." R. p. 1939, lines:4-6. Shedlin further opined that Pampu's standardized test scores and undergraduate grade point average were sufficient to gain admittance to dental school based on the nationwide admittance rate for dental schools in the year that Pampu applied to dental school. R. p. 1939, lines 8-22. It was also Shedlin's "opinion that under a different set of circumstances in which there

was not a suspension, which he had to self-report that's on an application . . . that he would've gotten in" to dental school and specifically at least one of the nine dental schools that he applied to. R. p. 1939, line 22-p. 1940, line 6; p. 2000, lines 12-18. Shedlin further testified that it was his opinion that Pampu would have completed dental school as well as the additional training necessary to become an orthodontist. R. p. 1940, line 22-p. 1941, line 4.

Pampu testified that, at the time of trial, his base salary as a sales representative was \$72,000 per year. R. p. 1608, lines 21-22. Shedlin testified that even as a successful sales representative, Pampu can expect to earn significantly less over the course of his lifetime than what he could have earned as an orthodontist. R. p. 1959, lines 3-7. This testimony was notably admitted into evidence by the Circuit Court over the objection of Gahagan's counsel. R. p. 1959, lines 3-12. The Supreme Court of South Carolina has clearly stated that "proof with mathematical certainty of the amount of loss or damage **is not required**" in order for damages to be recoverable. *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981) (emphasis added). Additionally, "Translating legal damage into money damages is a matter peculiarly within a jury's ken. Thus, the determination or assessment of the proper amount of damages is a question for the jury although if the amount allowed is inadequate or excessive, the court may interfere." 22 Am. Jur. 2d Damages § 797. The jury was also clearly instructed by the Court that any award of damages related to Pampu's civil conspiracy claim could not be speculative and must be "fair, just, and reasonable." R. p. 2301, line 21-p. 2302, line 2.

Shedlin's admissible testimony that Pampu can expect to earn significantly less over the course of his lifetime as a result of his inability to obtain admission to dental school and work as an orthodontist constitutes evidence sufficient to support an award of damages. At the time of trial, Pampu was 25 years old. A jury could reasonably assume that Pampu would work for

approximately 40 more years. Moreover, a jury could reasonably conclude that a provider of specialized medical services in constant demand, such as an orthodontist, would earn \$3,000,000 more than a sales representative over the course of a 40-year period. There is nothing speculative, unreasonable, or excessive about this valuation of damages. Indeed, based on the salary that Pampu was making a salesman at the time of trial, the jury's award shows that they determined that Pampu would have made twice as much as an orthodontist on a yearly basis over the course of a 40-year career had he been able to pursue that line of work. This certainly falls within the ambit of Shedlin's admissible expert testimony. The \$72,000 per year that Pampu earns as a salesman is "significantly less" than a \$150,000 per year salary that served as the basis of the jury's \$3,000,000 civil conspiracy award.

In *Mills v. S.C. State Ports Auth.*, 435 S.C. 213, 865 S.E.2d 910 (Ct. App. 2021), this Court found that there was no basis for disturbing a jury's award of \$616,710.07 in damages that failed to include a specific calculation as to how the jury reached that amount.⁷ *Mills*, 435 S.C. at 228, 865 S.E.2d at 917. In reaching this determination, this Court noted, "the trial court instructed the jury that a plaintiff was never entitled to speculative damages and that actual damages 'need not be proven to a mathematical certainty' but 'the evidence must allow [the jury] to determine what amount of damages is fair, just, and reasonable.'" *Id.* at 228, 865 S.E.2d at 917-918. In the instant matter, the Circuit Court explicitly told the jury that "Future damages need not be proved to a mathematical certainty and often must be approximated." R. p. 2301, lines 15-17. The Circuit Court also clearly explained that

⁷ While this Court's analysis in *Mills* was performed in the context of an appeal related to a request to grant a new trial absolute or a new trial *nisi remittitur*, the Court was still determining whether the jury's verdict was supported by the evidence. *Mills*, 435 S.C. at 226, 865 S.E.2d at 916. The *Mills* case is therefore useful in determining the instant matter.

Neither the existence, causation nor amount of damages can be left to conjecture, guess, or speculation. Damages must be proved with a reasonable degree of certainty. The evidence presented by the plaintiff must enable you, the jury, to determine what amount is fair, just, and reasonable.

R. p. 2301, line 21-p. 2302, line 2. Thus, like the jury in *Mills*, the jury in this matter was properly charged on the parameters for determining the damages. Based on the testimony offered by Pampu and Shedlin, the jury determined that Pampu was entitled to \$3,000,000 in damages as a result of Wingo and Gahagan's civil conspiracy.

Further, there is simply no basis for the Circuit Court's finding that the damages related to Pampu's defamation and civil conspiracy claims are duplicative. Pampu is entitled to recover damages for the different harms that he suffered as a result of the defamatory speech he endured and the civil conspiracy that he was subjected to. As noted by the Supreme Court of South Carolina, "Election of remedies involves a choice between different forms of redress afforded by law for the same injury or different forms of proceeding on the same cause of action." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 56, 691 S.E.2d 135, 152-53 (2010) (internal quotations and citation omitted). "Where a plaintiff presents two causes of action because he is uncertain of which he will be able to prove, but seeks a single recovery, he will not be required to elect." *Adams v. Grant*, 292 S.C. 581, 586, 358 S.E.2d 142, 144 (Ct. App. 1986). However, while a party that has asserted only one primary wrong is entitled to only one recovery, this principle does not apply where a party 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).

Here, the jury issued verdicts awarding Pampu distinct damages for two separate actions that arose from two separate sets of facts: (1) civil conspiracy; and (2) defamation. As shown at trial, and detailed extensively above, 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. Section I. A.-C., *supra*. Pampu's defamation claim is based on false statements that Wingo and Gahagan made outside of the Clemson process and which tarnished his reputation. R. p. 1465, line 23-p. 1466, line 7, p. 1676, line 19-p. 1679, line 25; p. 1682, line 18-p. 1683, line 9; p. 1684, line 12-p. 1686, line 18; p. 1687, line 4-p. 1688, line 13; p. 1772, lines 20-22; p. 1775, lines 2-6; p. 1776, lines 6-8; p. 1777, lines 10-13; p. 1777, lines 16-19; p. 3131; p. 3133; pp. 1118-1120. Moreover, the jury awarded different amounts of damages for each finding of liability made against Wingo and Gahagan. With regard to the defamation cause of action, the jury awarded \$700,000 in actual damages and \$450,000 in punitive damages against Wingo. R. p. 2314, lines 8-12. As a result of her actions contributing to the civil conspiracy, the jury determined that Wingo was liable for damages in the amount of \$2,000,000. R. p. 2314, lines 18-22. In determining the extent of Gahagan's liability for defamation, the jury awarded \$700,000 in actual damages and \$220,000 in punitive damages. R. p. 2314, lines 16-18. The jury awarded \$1,000,000 in damages against Gahagan based on his participation in the civil conspiracy. R. p. 2314, line 25-p. 2315, line 2. The different amounts awarded by the jury for each cause of action further support a finding that there were distinct bases for each award and an absence of any duplication in awards. Based on the foregoing, once the jury's civil conspiracy verdicts are restored, Pampu will be entitled to enforce both judgments without electing a remedy.

II. THE CIRCUIT COURT IMPROPERLY INVADED THE PROVINCE OF THE JURY BY GRANTING RESPONDENTS-APPELLANTS' JNOV MOTION

Based on the foregoing, it is clear that the Circuit Court failed to view the evidence and inferences therefrom in the light most favorable to" Pampu in wrongly deciding that Wingo and Gahagan were entitled to a JNOV with regard to Pampu's civil conspiracy claim. *Shupe*, 315 S.C. at 515, 445 S.E.2d at 654; *see also Unlimited Servs., Inc. v. Macklen Enterprises, Inc.*, 303 S.C. 384, 386, 401 S.E.2d 153, 154 (1991) ("In ruling on motions for a directed verdict or judgment

non obstante veredicto, the trial court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party, and if it is susceptible of more than one reasonable inference, the case should be submitted to the jury.”) (italics in original). The evidence presented at trial clearly yielded “more than one reasonable inference,” meaning that the JNOV motions should have been denied. *Shupe*, 315 S.C. at 515, 445 S.E.2d at 654; *see also Unlimited Servs., Inc.*, 303 S.C. at 386-388, 401 S.E.2d at 154-155 (reinstating jury verdict where the evidence presented to the jury created more than one reasonable inference related to the plaintiff’s claim). Moreover, as shown by the extensively detailed evidence above, the Circuit Court clearly failed to heed this Court’s clear directive that a jury verdict “will be upheld if there is any evidence to sustain the factual findings implicit in the jury’s verdict.” *Shupe*, 315 S.C. at 515, 445 S.E.2d at 654; *see also Unlimited Servs., Inc.*, 303 S.C. at 386-388, 401 S.E.2d at 154-155 (reinstating jury verdict where evidence submitted to jury was sufficient to support jury’s finding). Accordingly, the Circuit Court’s decision to overturn the unanimous jury verdicts was improper and should be reversed.

Further, as explained in great detail above, the evidence in the record was sufficient to support the jury’s determination that Wingo and Gahagan engaged in a civil conspiracy to have Pampu removed from Clemson and that Pampu was damaged as a result of that conspiracy. *See* Section I., *supra*. (detailing evidence presented at trial that was sufficient to support a finding of liability for civil conspiracy against Wingo and Gahagan). In granting the motions for JNOV, the Circuit Court improperly substituted its view of the facts for the findings of the jury. R. pp. 6-7. The Circuit Court correctly denied Wingo and Gahagan’s motions for a directed verdict at trial, thus concluding that it was up to a jury to determine whether Pampu had presented sufficient evidence to prevail on his civil conspiracy cause of action. R. p. 2207, line 14-p. 2214, line 19;

see *Unlimited Servs., Inc.*, 303 S.C. at 386, 401 S.E.2d at 154 (“In ruling on motions for a directed verdict . . . the trial court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party, and if it is susceptible of more than one reasonable inference, the case should be submitted to the jury.”). If, as the Supreme Court of South Carolina has clearly stated, a “motion for a JNOV is merely a renewal of the directed verdict motion,” then the only logical conclusion that could be gleaned from the Circuit Court’s inconsistent behavior is that the Circuit Court improperly based its JNOV decision on its disagreement with the jury’s factual findings and credibility determinations. *RFT Mgmt. Co.*, 399 S.C. at 331, 332, 732 S.E.2d at 171. Such a scenario requires the reversal of the Circuit Court’s decision and the reinstatement of the jury’s verdicts. *Unlimited Servs., Inc.*, 303 S.C. at 386-388, 401 S.E.2d at 154-155.

Indeed, this Court has relied on the inherent inconsistency in a circuit court’s denial of a directed verdict and later grant of a JNOV motion in order to reinstate the jury’s verdict. In *Garrison v. Target Corp.*, 429 S.C. 324, 838 S.E.2d 18 (Ct. App. 2020), *aff’d in part as modified, rev’d in part*, 435 S.C. 566, 869 S.E.2d 797 (2022), the circuit court denied the defendant’s motion for a directed verdict at trial with regard to punitive damages. *Garrison*, 429 S.C. at 349, 838 S.E.2d at 31. In denying the motion for a directed verdict, the circuit court found that there was sufficient evidence to support such an award and stated, “[T]he [c]ourt finds that there is at least evidence that[,] when viewed in the light most favorable to the nonmoving party[,] could lead to more than one inference or at least cause an inference that is in doubt.” *Id.* (internal quotations omitted) (bracketed text in original). Despite this initial finding, the circuit court inexplicably granted the defendant’s post-trial JNOV motion and set aside the jury’s award of punitive damages. *Id.* Noting “the inconsistency between the circuit court’s JNOV and its initial denial of [the defendant’s] directed verdict motion as to punitive damages,” this Court stated that it agreed with

the initial assessment of the circuit court, reversed the JNOV ruling, and reinstated the jury's verdict. *Id.*

In the instant matter, the Circuit Court denied Wingo and Gahagan's motions for a directed verdict with regard to Pampu's civil conspiracy cause of action. R. p. 2207, line 14-p. 2215, line 15. In reaching its decision to deny the directed verdict motions, the Circuit Court determined that the evidence presented by Pampu at trial could permit a jury to determine that he had established the elements of civil conspiracy delineated by the Supreme Court of South Carolina in *Paradis*. See R. p. 2214, lines 18-19 (denying Wingo and Gahagan's motions for a directed verdict with regard to Pampu's cause of action for civil conspiracy based on a review of *Paradis*). The Circuit Court was particularly focused on the second element of civil conspiracy noted in *Paradis* – the commission of an unlawful act or a lawful act by unlawful means. R. p. 2208, lines 10-12. Pampu explained that Wingo and Gahagan's tortious interference with his contract with Clemson constituted an unlawful act. R. p. 2209, lines 7-20. Relying on a footnote in *Paradis*, the Circuit Court accepted Pampu's contention that tortious interference with a contract could satisfy the second element of his civil conspiracy claim and determined that there was sufficient evidence in the trial record to (1) support denial of the motions for a directed verdict and (2) refer Pampu's civil conspiracy claim to the jury. R. p. 2212, lines 5-16, p. 2214, lines 18-19; see also *Paradis*, 433 S.C. at 571, n.6, 861 S.E.2d at 778, n.6 (explaining that in a civil conspiracy matter, “‘unlawful’ merely means ‘contrary to law’ and is not limited to criminal conduct.”). In denying the motions for a directed verdict, the Circuit Court also agreed that Pampu was not seeking any sort of double recovery as part of his claim for civil conspiracy. R. p. 2214, lines 15-17.

The facts outlined above indicate that the Circuit Court exceeded its authority when it improperly overturned the jury's verdicts in Pampu's favor with regard to his civil conspiracy

cause of action. The law in South Carolina could not be clearer – “A motion for a JNOV is merely a renewal of the directed verdict motion,” and a circuit court lacks “the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence” when deciding a JNOV motion. *RFT Mgmt. Co.*, 399 S.C. at 331, 332, 732 S.E.2d at 171. Indeed, if a JNOV motion is simply a rehash of the arguments made during the directed verdict stage, it is unclear how a circuit court could possibly deny a motion for a directed verdict and then grant a JNOV motion on the same issue without improperly deciding credibility issues and/or resolving evidentiary conflicts. Review of the Circuit Court’s ruling on the Wingo and Gahagan JNOV motions clearly shows that the Circuit Court improperly exceeded its authority in overturning the properly-formed jury verdicts.

The Circuit Court artificially limited the scope of the agreement or plan that Wingo and Gahagan entered into by asserting that “there was no evidence that [the report made to Clemson regarding Wingo and Pampu’s sexual encounter] was based on any type of agreement or plan between” Wingo and Gahagan. R. p. 6. The identity of the individual who made the report to Clemson is irrelevant to Pampu’s civil conspiracy claim. Pampu’s civil conspiracy cause of action against Wingo and Gahagan is based on their plan to have Pampu removed from Clemson. Significant evidence – both explicit and implicit – of this plan was presented to the jury. *See* Section I. A., *supra*. (detailing the evidence presented at trial that proved the existence of a plan between Wingo and Gahagan to have Pampu removed from Clemson). Indeed, in denying the motions for a directed verdict, the Circuit Court recognized that the evidence presented at trial could permit a jury to render a finding that Wingo and Gahagan engaged in a common plan to have Pampu removed from Clemson. Thus, in overturning the jury’s verdicts and granting the JNOV motions, it is clear that the Circuit Court engaged in improper credibility determinations and

weighing of evidence. *See RFT Mgmt. Co.*, 399 S.C. at 331, 332, 732 S.E.2d at 171 (explaining that a circuit court lacks “the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence” when deciding a JNOV motion). Accordingly, the Circuit Court’s determination on this issue was wrong and must be vacated so that the jury verdicts can be reinstated. *See Garrison*, 429 S.C. at 349, 838 S.E.2d at 31 (reinstating jury verdict where circuit court acted inconsistently by denying directed verdict and later granting JNOV motion).

The Circuit Court’s assertion that Pampu failed to present evidence of the commission of an unlawful act or a lawful act by unlawful means is particularly peculiar. R. p. 6. During the argument of Wingo and Gahagan’s motions for a directed verdict, the Circuit Court painstakingly questioned the parties with regard to this second element of Pampu’s civil conspiracy claim. R. p. 2207, line 14-p. 2214, line 19. Pampu explained that Wingo and Gahagan unlawfully interfered with the contract that he had with Clemson. R. p. 2209, lines 7-20. Following a detailed review of *Paradis*, the Circuit Court agreed that the evidence that Pampu presented with regard to this unlawful act was sufficient for the matter to be submitted to the jury. R. p. 2212, lines 5-16, p. 2214, lines 18-19. Following the issuance of the civil conspiracy verdicts, the Circuit Court apparently disagreed with how the jury evaluated the evidence. Thus, it is abundantly clear that the Circuit Court exceeded its authority when it determined that Pampu failed to present evidence of the commission of an unlawful act by Wingo and Gahagan. *RFT Mgmt. Co.*, 399 S.C. at 331, 332, 732 S.E.2d at 171. Accordingly, this Court should overturn the Circuit Court’s decision and reinstate the jury’s verdicts. *Garrison*, 429 S.C. at 349, 838 S.E.2d at 31.

While the Circuit Court’s decision on the Wingo and Gahagan JNOV motions does not address the third element of civil conspiracy – the commission of an overt act in furtherance of the agreement – it is clear that Pampu presented sufficient evidence at trial that would permit the jury

to find in his favor on this aspect of his claim. *See* Section I. C., *supra* (detailing the overt actions taken by Wingo and Gahagan in furtherance of their plan to have Pampu removed from Clemson). Once again, the fact that the Circuit Court denied Wingo and Gahagan’s motions for a directed verdict indicates that it determined that the evidence presented at trial was “susceptible of more than one reasonable inference,” thus requiring that the case be submitted to the jury. *Unlimited Servs., Inc.*, 303 S.C. at 386, 401 S.E.2d at 154. Because the Circuit Court exceeded its authority in granting the JNOV motions, the jury’s verdicts should be reinstated. *RFT Mgmt. Co.*, 399 S.C. at 331, 332, 732 S.E.2d at 171; *Garrison*, 429 S.C. at 349, 838 S.E.2d at 31.

The Circuit Court also improperly determined that Pampu failed to provide any evidence of money damages resulting from Wingo and Gahagan’s conspiracy and incorrectly stated that the jury’s award was based on pure speculation. R. pp. 6-7. As noted above, Pampu’s expert provided admissible testimony establishing the economic harm that he suffered as a result of Wingo and Gahagan’s actions. *See* Section I. D, *supra* (detailing the evidence of Pampu’s economic damages presented to the jury at trial). In brief, the jury was made aware of Pampu’s salary at the time of trial and heard testimony from Shedlin – which was notably admitted over objection – that Pampu can expect to earn significantly less over the course of his lifetime as a sales representative than he would have as an orthodontist. R. p. 1608, lines 21-22, p. 1659, lines 3-12. Moreover, the Circuit Court’s decision to deny Wingo and Gahagan’s directed verdict motions indicates that the Circuit Court believed that it was appropriate for the jury to determine the extent of Pampu’s economic damages. *Unlimited Servs., Inc.*, 303 S.C. at 386, 401 S.E.2d at 154 (“In ruling on motions for a directed verdict . . . the trial court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party, and if it is susceptible of more than one reasonable inference, the case should be submitted to the jury.”). The Circuit Court also

incorrectly asserted that the damages claimed for Pampu's civil conspiracy cause of action were duplicative of his defamation claim. R. p. 7. This finding directly contradicts the Circuit Court's acknowledgment that Pampu is not seeking any sort of double recovery through his civil conspiracy claim. R. p. 2214, lines 15-17; *see also* Section I. D., *supra* (explaining the different sets of facts underlying each claim and the distinct bases for the awards given by the jury on each claim). Once again, it is readily apparent that the Circuit Court exceeded its authority, and the jury's verdicts should be reinstated. *RFT Mgmt. Co.*, 399 S.C. at 331, 332, 732 S.E.2d at 171; *Garrison*, 429 S.C. at 349, 838 S.E.2d at 31.

The inappropriate behavior by the Circuit Court outlined above requires the reinstatement of the jury's verdicts. *See Jones v. Sun Pub. Co.*, 278 S.C. 12, 14-17, 292 S.E.2d 23, 24-25 (1982) (overturning circuit court grant of JNOV and reinstating jury verdict where circuit court 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); *see also Garrison*, 429 S.C. at 349, 838 S.E.2d at 31 (overturning circuit court grant of JNOV and reinstating jury verdict where circuit court behaved inconsistently by denying directed verdict and later granting JNOV motion). Moreover, the Circuit Court's decision to essentially overturn its own ruling in such an arbitrary and capricious fashion should not be countenanced by this Court. Rather, such a profound waste of judicial resources and the jury's time should be discouraged. Because the Circuit Court's inconsistent behavior improperly invaded the province of the jury, this Court should grant Pampu's appeal, reverse the Circuit Court's ruling, and reinstate the unanimous and well-formed jury verdicts.

CONCLUSION

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

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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.

CERTIFICATE OF COUNSEL

The undersigned certifies that the enclosed complies with Rule 211(b), SCACR.

Respectfully submitted,

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