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**Jul 15 2024**

**SC Court of Appeals**

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*results matter*

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July 15, 2024

**VIA EMAIL ONLY**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**Re: Chris Williams v. applya Occupational Strategies, LLC, et al.  
Appellate Case No.: 2024-001012**

Dear Ms. Kitchings:

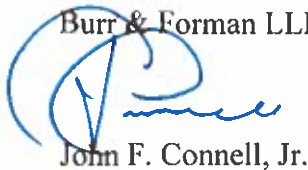
Please find enclosed the following documents for filing with the Court:

- July 15, 2024 Email from Court Reporter Emily Walker Enclosing the Completed January 8, 2024 Hearing Transcript; and,
- Completed January 8, 2024 Hearing Transcript.

Please let me know if you need anything further at this time.

Sincerely,

Burr & Forman LLP



John F. Connell, Jr.

JFC/kb

Enclosures

cc: All Counsel of Record

**From:** Walker, Emily <ewalker@sccourts.org>  
**Sent:** Monday, July 15, 2024 1:55 PM  
**To:** Beasley, Kailyn; Connell, John  
**Cc:** Transcripts  
**Subject:** Chris Williams v Applya Occupational Strategies  
**Attachments:** 010824 Chris Williams v Applya Occupational Strategies et al.pdf

**This is an EXTERNAL email! STOP, ASSESS, and VERIFY**

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Attached is the completed transcript in the above captioned matter. I overestimated the number of pages and will put a refund in the mail this week.

thank you,

Emily H Walker, CVR  
Official Court Reporter  
2062 Roadrunner Rd  
Clover SC 29710  
[803-517-2121](tel:803-517-2121)

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1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
2 COUNTY OF GREENVILLE CASE NO.2022CP2306246

3

4 CHRIS WILLIAMS

5 Plaintiff,

6 -vs-

TRANSCRIPT OF RECORD

7

8 APPLYA OCCUPATIONAL STRATEGIES, LLC, ET AL

9 Defendant.

10

11 January 8, 2024

12 Greenville, SC

13 BEFORE:

14 The Honorable G.D. Morgan Jr., Judge.

15

16 APPEARANCES:

17 John F. Connell, Jr.

18 Attorney for Plaintiff

19

20 Fred W. Suggs, III

21 Attorney for Defendant

22

23

24 Emily H. Walker, CVR

25 Court Reporter

1 THE COURT: All right. Next motion.

2 2022 CP 23 6246. Williams versus Applya  
3 Occupational Strategies, et al. This is defendant's  
4 motion for partial summary judgment. If you would,  
5 each of you, identify yourselves for the record  
6 starting with the plaintiff.

7 MR. CONNELL: Good afternoon, Your Honor. John  
8 Connell, and I'm here on behalf of Chris Williams. And  
9 Chris Williams is sitting to my right, Your Honor.

10 THE COURT: All right.

11 MR. SUGGS: Hey, Your Honor. Trey Suggs. I'm  
12 here on behalf of defendants Applya, Tom Baumgarten and  
13 Felix Mirando.

14 THE COURT: All right. I believe this is your  
15 motion, Mr. Suggs. I'll hear from you.

16 MR. SUGGS: It is, Your Honor. As the Court  
17 knows, this is a motion for partial summary judgment on  
18 the limited issue of the damages which are recoverable  
19 under the Payment of Wages Act. Judge, this case is  
20 one filed by Chris Williams who is the prior, or  
21 former, CEO of Applya. Mr. Mirando and Dr. Baumgarten  
22 are board members and shareholders of Applya.

23 There was an employment agreement that governed  
24 the relationship between Applya and Mr. Williams, which  
25 is attached as Exhibit A to the memorandum, and quite

1 possibly to the motion itself. I think I might have  
2 doubled up there.

3 As the Court probably already knows, because you  
4 always read ahead, this is a breach of contract, breach  
5 of contract with fraud, and a violation of Payment of  
6 Wages Act with a piercing element, as well. So,  
7 technically, four causes of action, but really three.  
8 And, Judge, it really boils down to the question of  
9 whether Applya appropriately terminated Chris Williams.  
10 He contends that his termination was in breach of the  
11 agreement, while we contend it was appropriate. That  
12 issue is not before the Court and will ultimately have  
13 to be determined by jury.

14 As I understand it, Your Honor, for purposes of  
15 today's motion, it should be assumed that Mr. Williams  
16 was not terminated for cause, and that he has a viable  
17 wage payment claim against the defendants. So that's  
18 the starting point.

19 Judge, the wage payment claim (inaudible) or comes  
20 through South Carolina 41-10-10. In Paragraph 32 of  
21 the complaint, Mr. Williams alleges that he is entitled  
22 to quote, all wages due to him under the wage act  
23 including, but not limited to, two years of his salary  
24 and nondiscretionary bonus. The genesis of that claim,  
25 Your Honor, is clearly Section 6.48 of the employment

1 agreement, which, if you don't have it, I can pass it  
2 up.

3 But in that agreement it provides that should  
4 Williams be terminated by the board without cause or by  
5 the employer with good reason, the company shall, upon  
6 termination, be required to continue to pay to employee  
7 salary, bonus pursuant to Section 3.28 hereof for  
8 two years thereafter.

9 Judge, just to point out, it appeared, and I'm not  
10 quite to my argument yet, but it appeared from the  
11 brief I saw last Friday is Mr. Williams' position that  
12 that would be a lump -- excuse me, lump sum payment.  
13 That's not what the contract says. The contract  
14 actually says that it would be a continuation of  
15 payment of salary for two years. And I think in the  
16 context of our respective arguments that language is  
17 very important.

18 Judge, this matter is appropriately before the  
19 Court. I noticed Mr. Connell did not seem to argue  
20 against that in his memorandum because actions seeking  
21 damages under the Wage Payment Act are actions of law.  
22 Thus the question of recoverable damages is properly  
23 before you under McCall versus IKON. And we're simply  
24 asking the Court to answer a singular question. Can  
25 Williams seek and potentially recover his salary and

1 bonus for two years after his termination under the  
2 wage payment claim?

3 And let me go ahead and tell the Court he can  
4 under the contract. We do not dispute that. We  
5 believe that will be a factual question for a jury to  
6 determine. The question before the Court is whether he  
7 can also seek those particular contractual damages  
8 under a wage payment claim. It is our position,  
9 obviously, that he cannot as what he is seeking amounts  
10 to either future and prospective wages, or a penalty,  
11 but not for services rendered.

12 Judge, you well know that SC Code Annotated  
13 Section 41-10-10 defines wages. Wages means all  
14 amounts in which labor rendered is recompensed...(sic).  
15 The purpose of the wage act is to protect employees  
16 from unjustified and retained wages that have already  
17 been earned for labor rendered, not for prospective  
18 wages.

19 I think Mr. Connell took issue with my utilization  
20 of Mathis, and I want to be clear to the Court that I  
21 was not suggesting the facts in Mathis are exactly what  
22 they are here, but the issue is squarely the issue  
23 before this Court.

24 THE COURT: And the argument, issue and the  
25 holding of the Court. I've read it. I've read the

1 file, so.

2 MR. SUGGS: Right. It's just the issue. And our  
3 position, really, boiled down is that contractual  
4 language found in the agreement is for prospective  
5 wages or a penalty. That is for future work, not work  
6 that has already been performed. It's a penalty most  
7 likely. I would argue that it's more likely a penalty  
8 than prospective wages, or wages, period.

9 But the continue-to-pay language, as well as the  
10 two years thereafter, shows that it's payment to be  
11 ongoing. He's not working any further. It cannot be  
12 for work already performed or rendered. It is  
13 necessarily, by the language itself, prospective wages  
14 or a penalty. He can get it under a contract if the  
15 jury agrees with him, but I don't think he can claim it  
16 under the Wage Payment Act.

17 It's important, Judge, because -- it's pretty  
18 transparent why it's important. You have got this  
19 traveling issue, you have got attorney's fees issues.  
20 It was a -- it has been a sticking point thus far.  
21 It's one that we decided we needed to get an answer  
22 from the Court one way or another.

23 THE COURT: All right. Mr. Connell, I want to  
24 hear from you.

25 MR. CONNELL: Thank you, Your Honor, and good

1 afternoon, again. May it please the Court?

2 I'm sitting here with Mr. Williams and I think  
3 Mr. Suggs did a good job of, kind of, giving you some  
4 context, but I think a greater context we are, of  
5 course, here on this partial summary judgment motion.  
6 So obviously, we have got this lawsuit that's against  
7 Applya and the board of directors, and the owners are  
8 Mr. Baumgarten, Mr. Mirando, and Mr. Garnock. That's  
9 why they are included.

10 Now as Mr. Suggs said, that is exactly what we are  
11 looking at on this payment of wages. I know you have  
12 already read it. I do want to hand it up if you  
13 wouldn't mind. This is what we filed, but it's also  
14 got a map of this case, and I thought it would be  
15 pertinent for you to see. And if you wouldn't mind,  
16 I'll hand it up. And, Your Honor, I have sticky tabs  
17 and I'll go through those to, kind of, give you a  
18 little bit of insight and, kind of, a roadmap as we go.

19 But, again, as you just heard, Mr. Suggs filed  
20 this motion for partial summary judgment on a single  
21 provision of Mr. Williams' employment agreement and  
22 that single provision is 6.4. Now, you know, and I've  
23 got that. If you flip over to the second page, Your  
24 Honor. You can actually read along. This is part of  
25 my memo. I've got it at the bottom on the second

1 page --

2 THE COURT: I read that paragraph last night, 6.4.  
3 and 6.5, maybe.

4 MR. CONNELL: Yes. 6.4, A and B.

5 THE COURT: A and B. That's what it was, yeah. I  
6 read it.

7 MR. CONNELL: What's important about that, and I  
8 find this really interesting, and Mr. Suggs sort of  
9 touched on this is, you have got 6.4 A discusses  
10 termination without cause, 6.4 B discusses termination  
11 with cause. Your Honor, you just heard a second ago,  
12 it's interesting that Applya has taken the stance in  
13 this entire lawsuit that they terminated Mr. Williams  
14 with cause. But now they have kind of reverted and  
15 said, well, maybe let's look at it from a different  
16 angle if he was terminated with cause, so.

17 Before we kind of get into it, we have got this  
18 facts issue. If they want to concede that Mr. Williams  
19 was, in fact, terminated with cause, I'll be happy to  
20 accept that concession. But I think that's a fact we  
21 have got to get through.

22 But prior to addressing this legal issue, I think  
23 it's important for the Court to understand the context  
24 surrounding Mr. Williams' employment agreement. As  
25 Mr. Suggs stated, Mr. Williams' is the former chief

1 executive officer of Applya. He entered into his  
2 employment agreement in April of 2018, and pursuant to  
3 that contract it was an initial term of five years, and  
4 he got a salary, and what I considered, Your Honor,  
5 we've got it here in the agreement, it says bonus  
6 pursuant to Section 3.2 A. And just for your  
7 knowledge, that was a nondiscretionary bonus. So he  
8 got salary and nondiscretionary bonus. That  
9 nondiscretionary bonus is equal to 2 percent of  
10 Applya's net operating income. So that's -- he was  
11 guaranteed that every year.

12 So, and you have also got what I consider in this  
13 Section 6.4. This was consideration for what  
14 Mr. Williams had argued and negotiated for, and that's  
15 for the services he rendered. I won't read it because  
16 you have got it in front of you. But what is important  
17 about it is 6.4 A., and I will just identify, is that  
18 Mr. Williams' salary and nondiscretionary bonus can  
19 only be remitted upon termination. In other words,  
20 Mr. Williams cannot perform any other services, labor,  
21 or work to receive this, which brings us to why we're  
22 here today.

23 I'll tell you about what happened with  
24 Mr. Williams as it relates to his termination. Your  
25 Honor, on August 16, 2022, Mr. Williams, as the CEO,

1 came to the board and the owners of Applya and he said,  
2 guys, I like being CEO, but I think I'm better suited  
3 in another position. A month later he sends an email,  
4 follows up and says the exact same thing, that is, I  
5 think I'm better suited in another position.

6 Seven days after that email, Your Honor, these are  
7 the exhibits attached, the board replies, the owners,  
8 they write back and they say, sure. Send us your  
9 proposals. We'll look at it. We'll see if we want to  
10 change your employment agreement.

11 Your Honor, as my client is writing up the  
12 proposals, they send him a termination notice  
13 seven days after they asked him, seven days after they  
14 asked him. So they terminated him on October 14th.  
15 This lawyer subsequently brought this suit for  
16 violation of South Carolina Payment of Wages Act,  
17 breach of contract, breach of contract with a  
18 fraudulent act, and of piercing the corporate veil.

19 Just for your tidbit, Your Honor, Applya  
20 officially closed its doors last week on December  
21 31st. Applya is now defunct, and now the owners want  
22 out. So in their motion, the defense contends that  
23 section 6.4 A is indicative of either future or  
24 prospective wages.

25 And I want to talk about the Mathis case because

1 that's what we're really here about, the Supreme Court  
2 in the Mathis case. In the Mathis case the employee  
3 had a two-year employment contract.

4 THE COURT: And he got terminated before his  
5 two years ran out.

6 MR. CONNELL: That's exactly right. And what's  
7 important to know is he got terminated in March of his  
8 second year of employment. The trial court, Judge  
9 Couch, came in and said, well, I'll give you wages from  
10 March to December. But the Supreme Court reversed and  
11 said, well, wait a second. Those are unearned,  
12 unearned wages. And that's true. He had not yet  
13 worked it. And they said those are prospective wages  
14 because he hadn't worked it. Here was different.

15 Mr. Williams, pursuant to the language of the  
16 contract, and I agree with Mr. Suggs, it's upon  
17 termination. When you look at the South Carolina  
18 Payment of Wage Act, it's for labor, for services  
19 rendered in the past. Upon termination it is  
20 impossible for Mr. Williams to continue to have any  
21 services, it doesn't matter one hour, two years,  
22 whatever. He is entitled. It is owed to him upon  
23 termination. And that's it.

24 And so to say that these are not wages, what could  
25 they be for? They must be wages. That's what he

1 negotiated in his contract. And that's what the plain  
2 language is. And as it relates to this lump sum, I  
3 don't agree with that. If you look specifically at the  
4 language of the statute, it says for labor, for  
5 services previously rendered. It doesn't talk about  
6 when payment is owed. It talks about when the services  
7 are due. And so after the services are, then the  
8 payment is owed.

9           So, Your Honor, in looking at this and holding  
10 even in the language of Mathis, Mr. Williams, under  
11 Section 6.4 A, is owed these wages for his unlawful  
12 termination. And he's entitled to be paid under the  
13 South Carolina Payment of Wages Act. And as a result,  
14 Your Honor, we respectfully ask that you deny the  
15 motion for partial summary judgment. Thank you.

16           THE COURT: All right. Mr. Suggs, anything in  
17 response?

18           MR. SUGGS: Very quickly, Your Honor. In case the  
19 Court was confused by what I was saying as Mr. Connell  
20 probably, or apparently, is, I was simply saying that  
21 when I bring a motion for summary judgment, we must  
22 take the facts in the light most favorable to the  
23 nonmoving party; therefore for purposes of my argument  
24 here today only, we agree he has a viable action under  
25 the wage payment claim. I don't want for him to take

1 away anything else from today. And I certainly don't  
2 want the Court to think I was making some kind of  
3 concession.

4 THE COURT: I didn't, I didn't interpret it as a  
5 concession. I interpreted it solely for purposes of  
6 this argument.

7 MR. SUGGS: Thank you, Judge. Briefly addressing  
8 his argument, Judge. The fact that payment is due at  
9 termination does not therefore automatically make it a  
10 wage. It can still be a penalty provision of the  
11 contract, which it obviously is.

12 Secondly, Your Honor, it is not the statute that  
13 causes his salary and bonuses to be paid immediately.  
14 It's the contract language which clearly states that  
15 they would continue to pay his wages for the following  
16 two years, in case there was some, something unclear  
17 about our argument in that respect. But we, we stand  
18 by the arguments already set forth, both in the  
19 memoranda as well as earlier here today, that these are  
20 not wages for services rendered and, therefore, they  
21 are not recoverable under the Payment of Wages Act.

22 THE COURT: All right. Anything in response,  
23 Mr. Connell?

24 MR. CONNELL: Just briefly. About the, obviously  
25 it is a penalty, that sounds like a fact dispute, as we

1 say, pursuant to the wages act. Thank you, Your Honor.

2 THE COURT: All right. Thank you both. I'll take  
3 it under advisement. I've read the file and I'm  
4 familiar with Mathias (ph) or Mathis. I've read it as  
5 well. I actually read it a couple of times last night.  
6 But I'll take a look at it, again, with your arguments  
7 and I'll let you know this week of my decision.

8 MR. SUGGS: Thank you, Judge.

9 MR. CONNELL: Thank you, Your Honor.

10 THE COURT: Thank you both.

11 END OF TRANSCRIPT OF RECORD.

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1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA )

4 COUNTY OF GREENVILLE )

5 I, the undersigned Emily H. Walker,  
6 official Court Reporter for the 13th Judicial Circuit  
7 of the State of South Carolina, do hereby certify that  
8 the foregoing is a true, accurate, and complete  
9 transcript of the record of all proceedings had and  
10 evidence introduced in the hearing of the captioned  
11 case, relative to appeal, in the Court of Common Pleas  
12 for Greenville County, South Carolina, on the 8th of  
13 January, 2024.

14 I do further certify that I am  
15 neither kin, counsel, nor interest to any party hereto.

16 In witness whereof, I have hereunto  
17 subscribed my name, this 15 of July, 2024.

18

19

20

21 Emily H. Walker, CVR

22 Court Reporter

23

24

25