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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Circuit Court Case No. 2022-CP-23-06246 and
Appellate Case No. 2024-001012

Chris Williams ……..…….. Appellant,

v.

applya Occupational Strategies, LLC, Felix Mirando
Tom Baumgarten, and Andrew Garnock….. . . …….……...Respondents.

INITIAL BRIEF OF RESPONDENTS

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2. The circuit court applied the proper standard for summary judgment.

STATEMENT OF THE CASE

This case arises from the proper for cause termination of an employee, Chris Williams ("Appellant"). Appellant, the former Chief Executive Officer of applya Occupational Strategies, LLC ("applya" or the "Company"), brought the Company to the brink of financial ruin through his leadership. Appellant was terminated for good cause on October 14, 2022.

Appellant was hired as the Chief Executive Officer on April 1, 2018, with a mandate to expand and grow the Company. The Company gave him every opportunity to do so, even granting Appellant a two-year extension to his initial five-year employment agreement. By August of 2022, however, Appellant's failure to carry out his mandate was becoming too clear to ignore. As a preemptive move to avoid termination, Appellant offered to step down from his position and take a new role within the Company. This request, and the financial position Appellant put the Company in, caused the Board of Directors to investigate and discover a laundry list of misdeeds requiring his termination.

Appellant commenced this action on November 14, 2022, asserting causes of actions for (i) breach of contract, (ii) breach of contract accompanied by fraudulent act, (iii) violation of the South Carolina Payment of Wages Act, and (iv) piercing the corporate veil against the Company, and its former owners and alleged members of its Board of Directors, Felix Mirando, Tom

Baumgarten, and Andrew Garnock.[1] Appellant brought this action in the lower court seeking to compel the Company to continue to pay Appellant's salary and bonuses for two years post-termination, money he has not earned and is not entitled to recover.

At the lower court, the Company, Mirando, and Baumgarten (collectively "Respondents") moved for partial summary judgment on the basis that the Payment of Wages Act did not apply to the contested payments incorporated in the Employment Agreement. Defendant Andrew Garnock did not join in the motion for partial summary judgment because his liability is limited solely to a piercing the corporate veil claim. The circuit court was briefed, and the issue was orally argued on January 8, 2024.

The circuit court issued an order on January 16, 2024 (the "Order"), granting Respondents' motion, finding the payments sought by Appellant were not wages under the Payment of Wages Act as applied to the Employment Agreement, and Appellant's only avenue for recovery was the contract. Appellant moved the circuit court to reconsider on January 24, 2024, which was denied on May 14, 2024. The instant appeal was filed on June 12, 2024.

STATEMENT OF FACTS

Appellant, Chris Williams, is the former CEO of Respondent applya Occupational Strategies, LLC (hereinafter the "Company"). See Exhibit A, Employment Agreement. Respondents Felix Mirando and Tom Baumgarten are shareholders and members of the Board of Directors of the Company. See, Mem. of Law in Supp. of Mot. for Partial Summ. J. Defendant Garnock did not join in the motion for partial summary judgment and thus, is not a party to this appeal. *See* App Brief at 4, Fn. 1 citing Transcript of Record at 19-20.

[1] Garnock is not and has never been a member of applya's Board of Directors.

Appellant and the Company entered into an employment agreement (hereinafter "Employment Agreement") with an effective date of April 1, 2018. See Exhibit A, Employment Agreement. The terms of the Employment Agreement included a five-year term of employment, an annual salary of $250,000 with an agreed upon annual increase of $25,000 on each anniversary, and an annual non-discretionary bonus equal to two (2.0%) percent of the annual Operating Income of applya. Id. at Section 3.1.

The Employment Agreement provides terms related to Appellant's termination. See Exhibit A. Section 6.4(a) of the Employment Agreement provides that should Appellant's employment be "terminated by the Board without Cause or by Employee with Good Reason, the Company shall upon such termination be required to continue to pay to Employee his salary, bonus pursuant to Section 3.2(a) hereof and all other benefits and perquisites hereunder for two years thereafter and to accelerate all unvested Options to vest." Id. at Section 6.4

On July 15, 2020, just over two years into the Employment Agreement's five-year term, Appellant and applya executed an amendment to the Employment Agreement which, in part, extended Appellant's term of employment for an additional two (2) years. See Exhibit B, Amendment to Employment Agreement. This amendment to the Employment Agreement did not alter or amend the original Section 6.4 of the Employment Agreement. Id.

On October 14, 2022, Appellant's employment was terminated, for cause. See Exhibit D, September 29, 2022 Email. As a result, applya is not required to make any post-termination payments outlined in paragraph 6.4(a) of the Employment Agreement. See Employment Agreement at Section 6.4. Appellant disputes that cause exists for his termination and that post-termination payments in the Employment Agreement ought to be paid immediately as wages. See App. Brief at 5. Appellant argues that he is entitled to recover treble damages under the South

Carolina Payment of Wages Act (the "Act" or "Wage Payment Act") for two years of future salary and bonus, without rendering any further labor to the Company. See Compl. ¶ 32.

Respondents moved the circuit court for partial summary judgment on the discrete issue that Appellant could not recover under the Wage Payment Act because the subject payments do not constitute wages as defined by the Act. See Mem. in Supp. of Partial Summ. J. After briefing from both parties and a hearing on the motion, the circuit court granted Respondents' motion for partial summary judgment. See Order. The circuit court reasoned that because the payments, as contemplated by the Employment Agreement, were not earned through labor previously rendered, they could not be considered wages under the Act. Id.

As addressed more completely below, the circuit court correctly interpreted the Act as applied to the Employment Agreement, and its grant of partial summary judgment was proper. As such, Respondents request this Court affirm the ruling below.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, appellate courts apply the same standard that governs the trial court under Rule 56(c), SCRCP, which provides that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; Helms Realty, Inc. v. Gibson–Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005); Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. Willis v. Wu, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004); USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008).

"The plain language of Rule 56(c), *South Carolina Rules of Civil Procedure*, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." Boone v. Sunbelt Newspapers, Inc., 347 S.C. 571, 579, 556 S.E.2d 732, 736 (Ct. App. 2001); Baughman v. American Tel. and Tel. Co., 306 S.C. at 116, 410 S.E.2d at 545-46 (1991).

"When the circuit court grants summary judgment on a question of law, [this Court] review[s] the ruling de novo." Vista Del Mar Condo. Ass'n v. Vista Del Mar Condominiums, LLC, 441 S.C. 223, 232, 892 S.E.2d 532, 537 (Ct. App. 2023). "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Const., LLC, 413 S.C. 615, 620, 776 S.E.2d 426, 429 (Ct. App. 2015). "However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." Id., quoting Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

ARGUMENT

I. THE TRIAL COURT PROPERLY HELD THAT APPELLANT IS PROHIBITED FROM RECOVERY UNDER THE SOUTH CAROLINA WAGE PAYMENT ACT BECAUSE THE PAYMENTS ARE NOT WAGES FOR LABOR RENDERED

Appellant begins their brief by correctly stating that the "issues before this Court are exceptionally narrow." App. Brief at 12. Resolution of these exceptionally narrow issues can be achieved by straightforward interpretation of the Employment Agreement and the Wage Payment Act. Appellant and Respondents agree "wages" under the Act does not encompass unearned, future wages. App. Brief 17-18 ("Accordingly, the Supreme Court deemed these unearned wages

as 'prospective wages,' which are not covered by the Act."); see also, App Brief at 19. Given the Supreme Court's clear articulation of this principle in Mathis v. Brown & Brown of South Carolina, Inc., 389 S.C. 299, 698 S.E.2d 773 (2010) it would be surprising if either party argued that future, prospective wages were covered and Appellant does not do so here.

But Appellant makes two errors in discussing the Order and the relevant statutory and case law. First, Appellant tries to shoehorn contractual remedies and damages into compensation for services rendered so that he can claim these sums as wages and seek to recover against individual defendants, a goal about which Appellant is candid. App. Brief at p. 10, fn 7. Second, Appellant's discussion of case law and the Act leaves out the central language to the circuit court's decision – the meaning of the word "due." When the Employment Agreement and statute are read consistent with the rules of contract and statutory interpretation, it is clear the circuit court correctly granted summary judgment and should be affirmed.

The beginning point for determining whether post-termination payments are "wages" is the Employment Agreement. "The law in this state regarding the construction and interpretation of contracts is well settled." ERIE Ins. Co. v. Winter Const. Co., 393 S.C. 455, 461, 713 S.E.2d 318, 321 (Ct. App. 2011) (quoting Conner v. Alvarez, 285 S.C. 97, 101, 328 S.E.2d 334, 336 (1985). "When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect and the court must construe it according to its plain, ordinary, and popular meaning." Id., quoting Ellie, Inc. v. Miccichi, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004). "In addition, '[w]here an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it.'" Id. (citing Heins v. Heins, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App. 2001)). Here, the circuit court found that the

Employment Agreement was unambiguous, and no party disagreed before the circuit court. See Order at 5-6 ("the unambiguous language of [the Employment Agreement] . . ."). Therefore, the court's job is to construe the Employment Agreement according to its "plain, ordinary and popular meaning," and give effect to the intention of the parties. ERIE Ins. Co. v. Winter Const. Co., 393 S.C. 455, 461, 713 S.E.2d 318, 321 (Ct. App. 2011); Ellie, Inc. v. Miccichi, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004).

The Employment Agreement contains introductory words or phrases to each provision that explain the subject matter of the provision. Appellant's compensation is dealt with in Section 3 of the Employment Agreement, with the topical introduction "Salary and Bonus" and subsections Section 3.1 labeled "Salary," Section 3.2 labeled "Bonus," and Section 3.3 labeled "Stock Options." No part of Section 3 dealing with Appellant's salary, bonus, or other compensation, i.e., his "wages," promises that Appellant will receive two years post-termination salary as part of his wages. Instead, the provisions of the Employment Agreement cited by Appellant are contained in the "Termination" provisions of Section 6 of the Employment Agreement and deal with payments that will be owed to Appellant after termination (the "Termination Provisions").

The Termination Provisions provide clear, easy to understand terms for how post-termination payments will be made and when they are due. According to the Termination Provisions:

> "Except as otherwise required…in the event that either Employee's employment is terminated by the Board without cause or by Employee with Good reason…the Company shall upon such termination be required to continue to pay to Employee his salary and bonus pursuant to 3.2(a) hereof and all other benefits and prerequisites hereunder for two years thereafter…"

Employment Agreement at 6.4 (emphasis added). Section 3.1 of the Employment Agreement provides that Appellant's salary is $250,000.00 per year "payable to Employee in equal

installments in accordance with the Company's standard salary payment policies." Thus, a plain reading of the Employment Agreement shows if Appellant had been terminated without cause, the Company had to "continue to pay" him at his regular pay periods for two years "thereafter," i.e., after the date of termination.

The Act defines [w]ages as "all amounts at which labor is recompensed…which are due to an employee under any employer policy or employment contract." S.C. Code Ann. § 41-10-10 (2) (emphasis added). The word "due" was critical to the Supreme Court's decision in Mathis and to the circuit court's decision here. As explained by the Supreme Court, "[t]he word 'due' means 'owed or owing as a debt' and, as wages are defined by the Act, as amounts paid for labor rendered, no wages can be due for future services." Mathis, 389 S.C. at 318, 698 S.E.2d at 783; see also Das Ventures LLC v. Pure Fishing, Inc., C.A. No. 3:12-cv-596-JFA, 2024 WL 3606921 at *4 (D.S.C. 2024)(Anderson, J) ("Because of the Act's intentional use of the word 'due,' the Supreme Court explained: 'the word due' means owed or owing as a debt…'").

The question then is what amount of post-termination payments were "due" to Appellant because of labor rendered on the date of Appellant's termination? See Order at 5-6; Mathis, 389 S.C. at 316, 698 S.E.2d at 782 ("[T]he relevant date for determining whether the employer reasonably withheld wages is the time at which the wages were withheld, i.e., when the employer allegedly violated the Act."). The answer is nothing. As of the date of termination, nothing was "due" to Appellant pursuant to Section 6.4. Had his termination not been for cause, his next payment pursuant to this provision would have been at applya's next, regular payroll. These amounts cannot be "wages" under the Act because they were not due as of the date the claim allegedly arose.

As correctly stated by the circuit court, "[t]he unambiguous language [of the Employment Agreement] evidences that the continued payment of two years salary and bonuses post-termination are not wages for labor rendered." Final Order at 5-6. Appellant's claim that post-termination payments "must be for services previously rendered," App. Brief at 19, is not a defensible interpretation of the Employment Agreement. To read the Employment Agreement as Appellant urges, Appellant was actually earning $500,000.00 per year for his first two years of employment for services rendered, even though the contract expressly states his salary is $250,000.00 year. This is because, according to Appellant, for each year Appellant earned $250,000.00 as salary pursuant to Section 3 he was, at the same time, also earning an additional $250,000.00 per year in post-termination wages through Section 6. An ordinary reader of the Employment Agreement would not understand that the employee was actually earning double the salary recited by Section 3 because of language contained in a separate section dealing with Termination.

But even this interpretation is too generous to Appellant because the Employment Agreement does not contain any "earn-in" for the post-termination payments. Appellant's claim that post-termination payments "solely derive out of and are in consideration of the services Williams already rendered to applya," cannot be squared with the actual Termination Provisions. App. Brief at 19. By its plain language, if Appellant had worked only one full day for applya, been terminated without cause the next day, he would still be owed two years' salary post-termination pursuant to the Employment Agreement. The post-termination payments are contractual compensation or remedies for his potential future loss of earnings during a period of unemployment, not wages for as little as a day of work. Appellant's "loss" can be addressed through a breach of contract action but not a Wage Payment Act claim.

Appellant also points to the use of the word "forfeit" contained in the Termination Provisions as evidence that his post-termination payments were already earned. App Brief at 21. The provision cited by Appellant says:

> In the event the Employee's Employment is terminated by the Board with Cause of by the Employee without Good Reason, the Company shall not be required to continue to pay Employee Employee's Salary, any bonus not theretofore awarded shall be deemed forfeited by Employee, and all unvested Options shall immediately terminate, be deemed forfeited by Employee, and be of no further force of effect.

Employment Agreement at 6.4(b). The word "forfeit" in this provision applies to only two things – (1) bonuses Appellant had already earned and (2) granted but unvested stock options. The key word words in this clause are the words "not theretofore awarded" and "unvested." A bonus already awarded at the date of termination can only be for services rendered up to the award. Options in the Employment Agreement were awarded upon execution of the agreement and vested based on tenure and performance. Employment Agreement at Section 3.3. Unvested options were not compensation because the contingencies required for them to vest had not been met. Said differently, an unvested option under the Employment Agreement was one that had not been "earned" because the conditions to earn it had not been achieved and, following Appellant's termination, could never be achieved. Forfeiture of an unawarded bonus, i.e. future bonus, and forfeiture of unvested options, i.e. not yet earned, does not give rise to a claim under the Act.

The circuit court correctly read the Act and applied it to the Employment Agreement. No post-termination payment was "due" to Appellant as of the date of termination. Any attempt to read the post-termination payments as payments for services already rendered leads to indefensible interpretations of the Employment Agreement – either double pay or that one day of service could be worth half a million dollars. The parties understood the clear, contractual language was not to

compensate Appellant for services rendered but to pay Appellant for a potential period of lost employment, particularly considering the Employment Agreements post-termination restrictive covenants found in Sections 7, 8 & 9 of the agreement.[2] This court should affirm.

II. THE CIRCUIT COURT PROPERLY FOUND THIS ISSUE IS A MATTER OF LAW, RIPE FOR SUMMARY JUDGMENT, AND CORRECTLY APPLIED THE STANDARD FOR SUMMARY JUDGMENT

a. Summary Judgment was Appropriate

Appellant takes issue with the circuit court deciding these "exceptionally narrow issues" on summary judgment for two reasons. App. Brief at 12. First, Appellant claims that language in the circuit court's order indicates that the circuit court was suffering from self-doubt when it applied the Act to the facts. App. Brief at 13. Second, Appellant claims that the circuit court was unsure of its interpretation of the General Assembly's intent for the Act. Both claims are based on a single sentence in the circuit court's Order that says "the Court contends that while the language in Section 41-10-10, et. seq. may be subject to another interpretation, the court believes that it is questionable whether the General Assembly intended for the Act to apply to the facts in this case." Order at 6. Appellant's argument, however, leaves out the very next sentence of the Order, which explains the previous sentence – "To the contrary, the Court believes the purpose of the Act is to pay wages for services rendered in the past and not the future, and the wages sought here are for future wages not covered by the Act." Id. When read together, it is clear the circuit court was not publicly expressing doubt about its decision. Instead, it was expressing its doubt about Appellant's argument.

But even if these sentences do provide a window into the circuit court's self-doubt, Appellant fails to explain what difference it makes. After highlighting the "questionable" language

[2] Although not addressed by the lower court and not necessary for a determination here, these sections give clues as to reasons for post-termination payments.

of the Order, Appellant fails to explain how further inquiry into the facts would "clarify the application of the law in this case." App. Brief at 14. Similarly, after highlighting the Order's "other interpretation" language, Appellant fails to explain how the circuit court misinterpreted the Act or what "other interpretation" advanced by the Appellant would have led to a different result. App. Brief at 15.

The narrow issues decided by the circuit court are prime examples of questions appropriately disposed of at summary judgment. "[T]he interpretation of a statute is a question of law." Sparks v. Palmetto Hardwood, Inc., 406 S.C. 124, 128, 750 S.E.2d 61, 63 (2013) (quoting CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). "Whether a contract's language is ambiguous is a question of law for the court," and the "[c]onstruction of a clear and unambiguous contract is a question of law for the court to determine." Portrait Homes - S.C., LLC v. Pennsylvania Nat'l Mut. Cas. Ins. Co., 442 S.C. 515, 579, 900 S.E.2d 245, 280 (Ct. App. 2023), reh'g denied (Apr. 24, 2024) (internal citations omitted).

The circuit court decided the applicable language in the contract was unambiguous and applied that language to the Act. No further factual inquiry will change what Appellant's salary was under the Employment Agreement, nor will further inquiry change the fact that post-termination payments are payments that would be remitted after Appellant stopped providing services to the Company. The parties do not disagree about these facts. The circuit court appropriately considered whether these facts fit the statutory definition of "wages" and correctly decided they do not.

b. The circuit court properly stated the General Assembly's intent in its passage of the Act

Appellant cites two rules of statutory interpretation without explaining what bearing those rules have on the circuit court's decision. App. Brief at 15. As correctly explained by the circuit

court, and as previously explained by our Supreme Court, the purpose of the Act is to make sure laborers are compensated for labor rendered, not to police post-termination compensation for highly paid executives. See Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995) (holding employer policies related to commission payments to a high ranking sales executive are not a violation of public policy or subject to the Act). Mathis provides a binding explanation of the legislative intent behind the Act. See Mathis at 389 S.C. 299, 319 (2010). As Justice Pleicones analyzed, "rendered," "recompensed," and additional signifiers found throughout the Act illustrate the legislature was solely concerned with compensating employees for all past and completed labor upon termination. Id. This is consistent with the purpose of the Act, "to protect employees from the unjustified and willful retention of wages by the employer." See Rice 318 S.C. 95 at 98; Mathis 389 S.C. 299 at 318.

Cases interpreting the Act's predecessor statute are instructive of the General Assembly's intent regarding the present iteration of the Act. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 605, 518 S.E.2d 591, 594 (1999). Futch cited several cases applying a predecessor statute, among them is Wynne v. Seaboard Air Line Ry. The Court in Wynne declared,

> "The purpose of the statute is to prevent the postponement, until the corporation's next regular pay day, of payment of the wages which a discharged laborer has earned at the time of his discharge, and which he would be entitled to sue for and collect immediately. . . . The Legislature probably considered that the hardship which befalls the needy laborer by withholding for a week, or two weeks, or a month the wages which he has earned is far greater than the inconvenience to the corporation which is caused by requiring a reasonably prompt settlement with him, so that he can use the money which he has earned in an effort to get other employment, or to live upon until he can get other employment, and thereby possibly prevent him and his family from becoming a burden upon the state.

Wynne v. Seaboard Air Line Ry., 96 S.C. 1, 79 S.E. 521, 522 (1913) (emphasis added).

The key throughline from the predecessor statute to the modern Act is focus on full payment that is due to the employee at the time of the alleged breach. Id; see S.C. Code Ann. § 41-10-10 et seq. The purpose is to protect a laborer from an employer pocketing his labor but not paying his wage. It is not intended to protect highly compensated executives from finding other work during a two-year period where they hoped to receive post-termination payments while providing no contemporaneous services. Appellant was paid promptly for the labor he rendered up to the point of termination. This case does not present the sort of harm the legislature intended to prevent through passage of the Act and this court should affirm.

CONCLUSION

For the reasons stated above, this Court should affirm the trial judge's rulings granting Respondents' motion for partial summary judgment.

December 13, 2024

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