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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

R. Lawton McIntosh, Circuit Judge
Common Pleas Case No. 2022-CP-37-00182

Appellate Case No. 2024-000739

Dorothy Pierce,

Appellant,

v.

Richard Hunt McDuff; MJM Law LLC,

Respondents.

RESPONDENTS' INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. Whether the Trial Court correctly granted Respondents' Motion for Summary Judgment on Appellant's claim of defamation.

II. Whether the Trial Court correctly granted Respondents' Motion for Summary Judgment on Appellant's claim of tortious interference with contractual relations.

COME NOW Respondents Richard Hunt McDuff and MJM Law, LLC and hereby file their Initial Brief in Response to Appellant's Initial Brief, showing the Court as follows:

STATEMENT OF THE CASE

This suit was initially filed on March 15, 2022, against the Journal Newspaper, Jerry Edwards, Edwards Printing, Edwards Group Holding, Inc., Riley Morningstar, Richard Hunt McDuff, MJM Law, LLC, and Hal Welch. Therein, Appellant asserted claims of defamation (against all defendants), intentional infliction of severe emotional distress (against all defendants), gross negligence (against all defendants), discrimination (against all defendants), intentional invasion of privacy (against all defendants), and unjust enrichment (against the Journal Newspaper and Edwards Group Holding, Inc.). Appellant filed an Amended Complaint on March 17, 2022, adding a claim against Richard Hunt McDuff and MJM Law, LLC for interference with business interests. All claims arise from a series of articles published in the Journal Newspaper in March 2022 which Appellant contends defamed her and caused her to lose revenue from her fledgling business. Plaintiff demanded $250,000,000.00 in damages.

Richard Hunt McDuff ("Mr. McDuff") and MJM Law, LLC ("MJM") (collectively "Respondents") filed a Motion to Dismiss on April 14, 2022, to which Appellant responded on June 1, 2022. On June 3, 2022, the Oconee County Court of Common Pleas granted Respondents' Motion to Dismiss in part, thereby dismissing Appellant's claims of gross negligence, discrimination, and intentional infliction of emotional distress.[1] The Motion was denied as to Appellant's claims of defamation and interference with contractual interests.

[1] This Order was entered on a Form 4. A formal and reasoned Order was entered on July 14, 2022.

Respondents filed their Answer to Appellant's Complaint and Amended Complaint on June 14, 2022, denying that they had defamed Respondent or interfered with her contractual relationships in any way. Discovery thereafter ensued on these claims, resulting in Respondents filing a Motion to Compel against Appellant on January 25, 2023. That Motion was granted on February 13, 2023, resulting in Appellant being ordered to produce all records relating to her damages claim and a witness list to Respondents within 15 days. Appellant failed to do so, resulting in a Motion for Sanctions being filed on March 15, 2023. After a March 22, 2023, hearing on same, that Motion was granted on April 4, 2023, limiting Appellant's documents supporting her damages claims to three exhibits presented at the hearing.

Respondents filed their Motion for Summary Judgment on November 21, 2023, and supporting Memorandum on January 12, 2024. Appellant responded on March 12, 2024, with a "Memorandum in Support of Summary Judgment on Defamation and Interference with Business Interest Claims." A hearing on Respondents' Motion was held on March 12, 2024, as well. A Form 4 Order granting Respondents' Motion was entered on March 20, 2024, with a formal Order entered on April 2, 2024.[2] Respondent then filed a Motion to Vacate the Summary Judgment Order on July 19, 2024, which was denied via a Form 4 Order on January 28, 2025, as improper. That Order has not been appealed, nor did Appellant file a motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure requesting the Trial Court to provide specific factual findings for its decision.

2 The March 26, 2024, Notice of Electronic Filing indicates the Proposed Formal Summary Judgment Order was served upon Appellant by traditional means.

Appellant's Original Notice of Appeal was served on March 29, 2024. On July 19, 2024, she served a Request to File an Amended Notice of Appeal and an Amended Notice to include the Formal Summary Judgment Order. A Second Notice of Appeal was served on August 10, 2024.

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. *Wright v. PRG Real Estate Mgmt., Inc.*, 426 S.C. 202, 212, 826 S.E.2d 285, 290 (2019); *USAA Property and Casualty Insurance Company, v. Clegg* 377 S.C. 643, 661 S.E. 2d 791 (2008) citing 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). When plain, palpable and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Clegg* 377 S.C. 653, 554, 661 S.E. 2d 796.

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Bankers Trust of South Carolina v. Benson, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976).* "Summary judgment is the time to 'fish or cut bait' – come forward with the evidence to support the claim/defense, or abandon it." *Voight v. Nederland,* No. C17-1360-MJP, 2018 WL 4583903 at *2 (W.D. Wa., Sept. 25, 2018). Issues need not be presented to a jury where, as here, the claims "rest on speculative, theoretical and hypothetical views." *Hurd v. Williamsburg County,* 353 S.C. 596, 609, 579 S.E .2d 136, 142–143 (Ct.App.2003). This is part and parcel of the firmly established rule that "verdicts may not be permitted to rest upon surmise, conjecture or speculation." *Small v. Pioneer Machinery, Inc.,* 329 S.C. 448, 461, 494 S.E.2d 835, 841 (Ct.App.1997).

Summary judgment is of particular importance in libel actions such as this one as compared to other civil actions, "due to the possible chilling effect on constitutionally protected speech which would result from the defense of defamation claims." *MRR S., LLC v. Citizens for Marlboro Cnty.*, 09-cv-3102, 2012 WL 1016180, at *2 (D.S.C. Mar. 26, 2012) (citing *Peeler v. Spartanburg Herald-Journal Div. of The New York Times Co.*, 681 F. Supp. 1144, 1146 (D.S.C. 1988)). Indeed, South Carolina courts have "expressed a preference for the dismissal by summary judgment of libel cases in order to prevent all but the strongest cases from proceeding to trial." *Id.* (citing *Sunshine Sportswear & Elec., Inc. v. WSOC Television, Inc.*, 738 F. Supp. 1499, 1505 (D.S.C. 1989).

ARGUMENT

Introduction

This case is the continuation of Appellant's vendetta against Respondents to cover her own misdeeds and to explain her failed businesses. She also seeks retaliation for her removal as the personal representative of her late husband's estate. Respondents serve as outside counsel for the co-defendants (the "Journal Defendants"). Respondents were also retained to represent one of Appellant's stepsons in a probate matter which resulted in the Probate Court concluding Appellant's late husband's Will had been forged and was hence invalid. Appellant was removed as the personal representative.[3] During this same time, Mr. McDuff learned that a lawsuit had been

[3] The matter was on appeal before the South Carolina Court of Appeals in case number 2021-001552, however Appellant dismissed same pursuant to SCACR 260(b) via this Court's Order dated February 25, 2025. The Trial Court was authorized to take judicial notice of these probate proceedings in determining Respondents' Motion for Summary Judgment. *Ellis v. Cates*, 178 F.2d 791(4th Cir. 1949). South Carolina looks to the construction placed upon the Federal Rules of Civil Procedure upon which the South Carolina Rules of Civil Procedure are based. *Gardner v. Newsome Chevrolet–Buick, Inc.,* 304 S .C. 328, 330, 404 S.E.2d 200, 201 (1991).

filed by one of Appellant's customers, Firewalker Hot Sauce, alleging she had breached their contract and was participating in questionable campaign activity in Uganda. To protect the assets of the currently embattled estate, a portion of which had been bequeathed to the Appellant's companies in the forged Will, Mr. McDuff and his client intervened in this lawsuit. Unhappy with the outcome of the probate matter, the *Firewalker* lawsuit, and the media coverage of her various misdeeds published by the Journal Newspaper, Appellant filed the instant action. It was originally brought in five counts, only three of which concerned the Respondents. On July 14, 2022, the Trial Court granted the Respondents' Motion to Dismiss Appellant's claims of gross negligence, discrimination, and intentional infliction of emotional distress. Only her defamation and interference with contractual interests claims remained on which the Trial Court granted Respondents' Summary Judgment Motion on April 2, 2024. That Order was correct and should be affirmed.

The defamation claim fails because there is no evidence Respondents made any defamatory statements. Appellant even conceded in her deposition that the statements were made by others. Second, Appellant did not and cannot prove actual malice, fault, unprivileged publications, materially false publications, or damages – all elements of a defamation claim.

The Appellant's interference with contractual interests claim fails because she had no contract with The Journal for the advertising of her business' products. As she admits, this alleged contract was in the name of one of her businesses, a separate and distinct LLC. Appellant thus lacks standing to bring such a claim. This claim also fails because there is no evidence Respondents induced The Journal to discontinue advertising Appellant's business' products. The Journal made this decision on its own. Appellant also cannot prove the damages element of an interference with contract claim.

Summary Judgment for the Respondents was therefore appropriate and should be AFFIRMED.

Factual Background[4]

The Underlying Litigation

This case stems from three separate but related legal proceedings involving the Appellant, each of which is or was pending before the Court of Common Pleas for Oconee County or the District Court of South Carolina.

1. The Pierce Estate Proceedings

In September 2020, after the death of her husband,[5] Appellant proffered Doyle Pierce's purported Last Will and Testament, naming herself as the Personal Representative of the Estate. *See* Exhibit "3" to Respondents' Summary Judgment Memorandum- Aug. 18, 2021 Order ¶¶ 1-3, *In re Pierce*, No. 2020-ES-37-00532. The purported Will made bequests to two companies owned by Appellant, "Intercontinental Alternative Medicine, LLC" and "American Pharma Machinery, LLC." *Id.* ¶¶ 12-13.[6] The purported Will left the remainder of Doyle Pierce's estate to his widow, Appellant. *Id*. ¶ 14.

4 Appellant's "Factual Background" is found on pages 11-24 of her Brief. There is not a single reference to the record in these 13 pages, in violation of Rule 208(b)(1)(E).

5 Appellant was 34 years old when she married Mr. Pierce, who was 72 years old. They were married from 2018, until Mr. Pierce's death in September 2020. Previously, she had been married to Mr. William Wells, whom she married on May 26 or 27, 2017, at age 34 when he was 77 (Pierce Depo. p. 38, ln. 19-24). Mr. Wells died on November 20, 2017, just six months later. (Pierce Dep. p. 453, ln. 19-22). In an email dated August 14, 2017, to his children of a prior marriage Mr. Wells stated, "Marrying Dorothy was to help Dorothy get the Green Card she needed to stay and care for me until my demise." (Pierce Dep. p. 39, ln. 11-20; p. 40, ln. 24-p.41, ln. 5; Dep. Ex. "3" attached as Exhibit "1" to Respondents' Summary Judgment Memorandum). All of Appellant's deposition testimony is attached as Exhibit "2" to its Summary Judgment Memorandum.

6 Appellant is the sole Member of both LLC's (Pierce Dep. p. 67, ln. 25-p.68, ln. 3; p. 93, ln. 5-11).

Jared Pierce, represented by Mr. Richard Hunt McDuff, filed a motion in the Oconee County Probate Court to determine the validity of his father's purported Last Will and Testament. *Id.* at 1. After analysis by the South Carolina Law Enforcement Division ("SLED") and the testimony of the two purported witnesses to the challenged Will, the Probate Court concluded that Doyle Pierce's purported Will was "invalid." *Id.* at 8. Further, because Appellant "possessed the invalid Will and presented it to the Court, an inference arises that she has knowledge that the Will is a forgery." *Id.* at 8. The Probate Court thus held that Appellant "must be removed as Personal Representative as not fit for the office." *Id.*

Appellant filed an appeal of the Probate Court's decision with the Oconee County Court of Common Pleas, arguing among other things, that the Probate Court "[i]ntentionally discriminated against [her] based on race, color and national origin," and that "it's absolutely cruel for the probate Court to taint the reputation of [Appellant] for having knowledge the will was forged and yet the Will is Valid and Authentic." *See* Exhibit "4" to Respondents' Summary Judgment Memorandum-Appeal Br. at 13, 19, *Pierce v. Pierce*, No. 2021-CP-37-00560. The Court of Common Pleas (Maddox, J.) denied that appeal, "find[ing] that there is sufficient evidence to support the Probate Court's ruling and findings." *See* Exhibit "5" to Respondents' Summary Judgment Memorandum - Dec. 29, 2021 Order, *Pierce v. Pierce.* Although Appellant contended Mr. McDuff "orchestrated" the entire proceeding (Pierce Dep. p. 183, ln. 14-20), she dismissed her suit pursuant to SCACR 260(b) via this Court's Order dated February 25, 2025.

2. The Firewalker Action

On February 24, 2021, Firewalker Hot Sauce Company, LLC ("Firewalker") filed an Amended Complaint in the Oconee County Court of Common Pleas against American Pharma Machinery, LLC, its owner – Appellant, identified in the case caption as "Dorothy Wells a/k/a Dorothy Alweny a/k/a Queen Dorothy Amolo" – and the Estate of Doyle Pierce. *See* Exhibit "6"

to Respondents' Summary Judgment Memorandum - Am. Compl., *Firewalker Hot Sauce Co., LLC v. American Pharma Machinery, LLC*, No. 2021-CP-37-00149. Jared Pierce moved to intervene in the case, seeking "to protect the interests of the [Doyle Pierce] Estate along with those of the other heirs" and arguing that Appellant was "not lawfully authorized to file pleadings on behalf of the Estate" following the Probate Court's decision removing her as Personal Representative. *See* Exhibit "7" to Respondents' Summary Judgment Memorandum - Mot. for Intervention, *Firewalker Hot Sauce Co., LLC v. American Pharma Machinery, LLC.* The Court (Maddox, J.) granted the motion to intervene on October 20, 2021.

3. Pierce v. Clements Electrical, et al.

On January 19, 2022, Appellant filed a pro se Complaint in the U.S. District Court for the District of South Carolina against Clements Electrical, Inc., several Clements Electrical employees, several of her own former employees, and Jared Pierce, as well as Jared Pierce's attorney, Richard McDuff, and his law firm Merrell, Jahn & McDuff. *See* Exhibit "8" to Respondents' Summary Judgment Memorandum, Compl., *Pierce v. Clements Electrical, Inc.,* No. 22-cv-175-TMC. Appellant asserted claims against the defendants for discrimination, unjust enrichment, intentional infliction of emotional distress ("IIED"), breach of contract, tortious interference, and defamation, among others. *Id.* at *5-6. For these claims, Appellant demanded "money damages in excess of 90 million dollars." *Id.* at *6. Pursuant to the District Court's procedures, U.S. Magistrate Judge Kevin F. McDonald made "a careful review" of Appellant's pro se Complaint "to ensure that subject matter jurisdiction exists and that [the] case is not frivolous." *Id.* That review resulted in a recommendation that Appellant's Complaint be dismissed because "the elaborate conspiracy described by the plaintiff in support of her [discrimination] claim finds no basis in law or fact to support federal proceedings." Further, the Magistrate Court stated:

> "[m]oreover, the plaintiff's allegations that the defendants are conspiring to ruin her appear based upon a personal animus related to the disposition of the estate of the plaintiff's husband, not a racial animus, and the plaintiff's conclusory assertions of pretext fail to save her § 1981 claim. *Griffith v. State Farm Fire and Cas. Co*., C/A No. 2:12-cv-00239-DCN, 2012 WL 2048200, at *1 (D.S.C. June 6, 2012) (finding that the plausibility standard requires more than "'an unadorned, the-defendant-unlawfully-harmed-me accusation.'") (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Pierce v. Clements Electrical et al, No. 8:22-CV-00175-TCM-KFM, 2022 WL 677289 at *4 (D.S.C., Feb. 4, 2022).

Magistrate Judge McDonald recommended that the dismissal be without automatic leave to amend, citing case law for the proposition that when a plaintiff's complaint is "preposterous and frivolous," it is "a waste of limited judicial resources to give [her] an opportunity to amend." *Id.* at *4 (internal marks omitted). Appellant did not object to that Report & Recommendation which U.S. District Judge Timothy M. Cain adopted in full, thereby dismissing the Complaint without prejudice. *Pierce v. Clements Elec., Inc.*, No. 8:22-CV-175-TMC, 2022 WL 673832 at *1 (D.S.C. Mar. 7, 2022).

The Subject Lawsuit

On March 15, 2022, Appellant filed the original Complaint in this case, which she amended on March 17, 2022. *See* Exhibit "9" to Respondents' Summary Judgment Memorandum - The Amended Complaint. On July 14, 2022, the Trial Court dismissed all of Plaintiff's claims save the defamation and intentional contractual interference claims, finding only that these claims had been sufficiently pled.

1. The Defamation Claim

When asked in discovery to identify each and every fact on which she bases her contention that Respondents defamed her, Appellant referred to her "Amended Complaint and other pleadings on file for all defamatory statements made by Defendants McDuff and Defendant MJM, Law,

LLC." (Plaintiff's Amended Response to Defendants' First Interrogatories, No. 6, attached as Ex. "10" to Respondents' Summary Judgment Memorandum). When deposed on this Interrogatory Response, Appellant testified that the defamatory comments on which her defamation claim is premised are found in her Amended Complaint and other pleadings on file (Pierce Dep. p. 101, ln. 23-p. 102, ln. 5). She then identified paragraphs 45, 46 & 47 of her Amended Complaint as referencing three defamatory publications which appeared in The Journal newspaper on which her defamation claim is based, for which Mr. McDuff is purportedly responsible (Pierce Dep. p. 106, ln. 8-12). She also contends that Mr. McDuff provided the Journal with a news report published by the Ugandan Alliance for Finance Monitoring ("ACFIM") and "pushed for it to be published by his friends" / "made it to be published" which is a defamatory act (Pierce Dep. p. 130, ln. 23-p. 131, ln. 6; p. 132, ln. 1-6).[7] According to Appellant, these articles constitute the "universe" of defamatory publications attributed to respondents (Pierce Dep. p. 107, ln. 4-8).[8]

(a) The ACFIM News Report

The ACFIM news report, published March 17, 2021, depicts Appellant at a Ugandan political rally holding up bundles of cash (Pierce Dep. p. 131, ln. 21-p. 132, ln. 1-6). It states she "moved with bundles of UGX 1,000 notes which she would first parade to the electorate convening on her campaign rallies before giving it out to be shared among everyone present." This news report was published before Mr. McDuff had ever met Appellant, that meeting occurring at the August 2,

7 The ACFIM article is attached as Exhibit "11" to Respondents' Summary Judgment Memorandum.

8 Appellant testified she discovered other allegedly defamatory publications, but they are not part of her lawsuit (Pierce Dep. p. 107, ln. 9-11).

2021, probate hearing (McDuff Dep. p. 13, ln. 11-13).[9] There is no allegation in this suit that Mr. McDuff was the source of this Article's content. Instead, Mr. McDuff simply advised Jerry Edwards[10] of the probate trial in which Mr. Pierce's Will was determined to be a forgery. (McDuff Dep. p. 45, ln. 10- 20). The Journal reporter, Riley Morningstar, then contacted Mr. McDuff to whom Mr. McDuff provided the ACFIM news report which was on the internet (McDuff Dep. p. 196, ln. 13-18). Neither Mr. McDuff nor anyone at his law firm requested, encouraged, demanded, advised, proposed, or suggested that The Journal publish anything about the ACFIM news report (Morningstar Aff'd. ¶ 20, attached as Exhibit "14" to Respondents' Summary Judgment Memorandum). Appellant even admits this news report was in the public domain when it was brought to Mr. Morningstar's attention (Pierce Dep. p. 130, ln. 19-22).

(b) <u>The March 4, 2022, "Passing Out Cash" News Report</u>

On March 4, 2022, The Journal published a news report entitled, "Report: Queen Passed Out Cash During Uganda Campaign" authored by The Journal reporter Riley Morningstar.[11] This news report paraphrased, and sometimes quoted, the ACFIM news report concerning Appellant's

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[9] All of Mr. McDuff's deposition testimony referenced herein is in Exhibit "12" to Respondents' Summary Judgment Memorandum.

[10] Mr. Edwards is the CEO of Edwards Group Holdings and a publisher for / employee of Oconee Publishing, which is wholly owned by Edwards Group Holdings (Edwards Dep, p. 10, ln. 22-p.11, ln. 9; p. 25, ln. 20-p.26, ln. 3; p. 34, ln. 4-7). Edwards Group Holdings is an employee stock ownership plan ("ESOP") which owns The Journal (Edwards Dep. p. 11, ln. 3-4; McDuff Dep. p. 18, ln. 4-15). Mr. Edwards' testimony referenced herein is attached as Exhibit "13" to Respondents' Summary Judgment Memorandum.

[11] This Article is attached hereto as Exhibit "15" to Respondents' Summary Judgment Memorandum. The green highlighting constitutes the language which Appellant contends is defamatory and attributable to Mr. McDuff (Pierce Dep. p. 127, ln. 19-22).

alleged passing out of cash during campaign rallies (Pierce Dep. p. 147, ln. 1-10).[12] When deposed, Appellant conceded on multiple occasions that Mr. McDuff was not the source of the information contained in this news report (Pierce Dep. p. 129, ln. 3- p.130, ln 4; p. 131, ln. 21- p. 132, ln. 6; p. 140, ln. 10-24). She confessed that she is unaware of any email, text message or other written communication from Mr. McDuff stating Appellant was handing out money at her campaign rallies, or otherwise attributing him as the source of the information contained in this news report (Pierce Dep. p. 143, ln. 4-12). Instead, this news report quoted verbatim the ACFIM news report (Pierce Dep. p. 143, ln. 13-19). The March 4, 2022, news report was principally based on Mr. Morningstar's interview with Appellant and the ACFIM news report, not on his discussions with Mr. McDuff. (Morningstar Aff'd ¶ 25).

Nonetheless, Appellant faults Mr. McDuff for the March 4, 2022, news report, hypothesizing that he "made it to be published," and "connived" with the Journal Defendants to do so (Pierce Dep. p.131, ln. 3-6; p. 132, ln., 13-15). When pressed for any evidence supporting such a claim, Appellant stated that when she advised Jerry Edwards of her intention to sue The Journal, he responded that she might as well include Mr. McDuff in the suit (Pierce Dep. p. 132, ln. 16-25). She also contends Mr. McDuff had a motive to publish the news report given his client's contest of Mr. Pierce's Will (Pierce Dep. p. 133, ln. 1-5). From there, Appellant makes the quantum leap that Mr. McDuff caused the March 4, 2022, news report to be published, despite confessing that she knows of no direction from him to The Journal to do so (Pierce Dep. p. 137, ln. 7-21; p. 138, ln. 11-24). This is because it was The Journal's decision to publish articles about Appellant, not Mr. McDuff's (McDuff Dep. p. 45, ln. 6-8). Mr. McDuff at no time requested, encouraged,

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[12] Appellant contends the Article inaccurately states she was handing out cash to voters. However, had it said she was handing out bundles of cash to a campaign manager who then handed it out to voters, then the Article would be accurate (Pierce Dep. p. 494, ln. 1-4).

demanded, advised, proposed, or suggested that The Journal publish the March 4, 2022, news report (Morningstar, Aff'd ¶ 25).

(c) The March 5, 2022, "Long Cons" News Report

On March 5, 2022, The Journal published a news report entitled, "She's Running Long Cons," also authored by Riley Morningstar.[13] This chronicled the dispute between Appellant and Mr. Doyle's sons, Jared and Gregory Pierce. When deposed, Appellant identified the following statements within it as defamatory: (i) "She's running long cons. Very immersive cons;" (ii) "nothing but a predator and a con artist;" (iii) "Jared said he believes Dorothy 'spun a big yarn' to his father and glamorized ways of making cash quickly;" (iv) "He said the two didn't even share a bedroom;" and (v) "Gregory Pierce said he thought his father was 'manipulated and lied to.'" (Pierce Dep. p. 159, ln. 8-14). Plaintiff was questioned on each of these statements, and admitted that Mr. McDuff was neither the source of any of them, nor that she did know the source (Pierce Dep. p. 159, ln. 18-p. 161, ln. 6; p. 163, ln. 9-p. 164, ln.4). This is because the March 5, 2022, news report was based on Mr. Morningstar's interviews with Plaintiff and Jared Pierce and his review of the court records in the lawsuit over Doyle Pierce's Will, not on his discussions with Mr. McDuff (Morningstar, Aff'd ¶ 28). Mr. McDuff at no time requested, encouraged, demanded, advised, proposed, or suggested that The Journal publish the March 5, 2022, news report (Morningstar, Aff'd ¶ 28).

[13] This Article is attached as Exhibit "16" to Respondents' Summary Judgment Memorandum. The portions highlighted in green are those which Plaintiff contends are defamatory (Pierce Dep. p. 159, ln. 8-14).

(d) The March 8, 2022, "Pierce Scammed $16K" News Report

Finally, on March 8, 2022, The Journal published a news report entitled, "Pierce Scammed $16K, Provided False and Damaged Machine," again authored by Riley Morningstar.[14] This news report addressed the Firewalker Action, alleging Appellant's American Pharmacy Machinery Company had sold Firewalker a damaged machine, different from that which it had ordered. As with the other articles, Appellant was questioned about each allegedly defamatory statement within it, line by line. In each instance, she attributed the source as the Complaint filed in the Firewalker Action, not Mr. McDuff (Pierce Dep. p. 165, ln. 15-18; p. 169, ln. 19-p. 170, ln. 3; p. 174, ln. 13-16; p. 174, ln. 22-p. 175, ln. 7; p. 175, ln. 20-p. 176, ln. 2). She even conceded this news report simply regurgitated the contents of the Firewalker Suit (Pierce Dep, p. 176, ln. 24-p. 177, ln. 19). This report was principally based on Mr. Morningstar's interview with Appellant, his review of the court records in the lawsuit that Firewalker Hot Sauce filed against Appellant and her company, his attendance at the August 2021 hearing in that lawsuit, and his review of court records in other lawsuits filed against Appellant or her company (Morningstar, Aff'd ¶ 30). At no time did Mr. McDuff nor anyone else at his law firm request, encourage, demand, advise, propose, or suggest that The Journal publish it (Morningstar, Aff'd ¶ 30).

2. The Interference with Contractual Interests Claim

In Count Five of her Amended Complaint, Appellant alleges that Respondents "maliciously and recklessly" directed the Journal Defendants to discontinue any advertising of her products. (Amended Complaint ¶ ¶ 66-69). When asked in discovery to state each and every fact on which she bases this contention, Appellant referred to "Plaintiff's Amended Complaint and

[14] This Article is attached as Exhibit "17" to Respondents' Summary Judgment Memorandum. The portions highlighted in green are those which Plaintiff contends are defamatory (Pierce Dep. p. 164, ln. 22-p. 165, ln. 3).

other pleadings on file." (Plaintiff's Amended Discovery Responses No. 8, attached as Exhibit "10" to Respondents' Summary Judgment Memorandum). When deposed, Appellant confirmed that the only contract with which she accuses the Respondents of interfering is the alleged advertising contract with The Journal, which resulted in her purportedly losing business from current and prospective customers (Pierce Dep. p. 214, ln. 12-p.215, ln. 2). Notably, this alleged contract was between The Journal and American Pharma, not Appellant (Pierce Dep. p. 194, ln. 17-p. 195, ln 4). Appellant admits that this means any interference with contract claim is one belonging to American Pharma (Pierce Dep. p. 195, ln. 12-17).

Regardless, the Respondents had nothing to do with The Journal's decision to discontinue its advertising relationship with appellant or her companies. In August 2021, Hal Welch, at the time the General Manager of The Edwards Media Group, received anonymous tips concerning several legal issues involving Plaintiff, her businesses, and her family which were referenced in an email from Mr. Welch to Appellant on August 31, 2021 (See Exhibit "18" to Respondents' Summary Judgment Memorandum).[15] Mr. Welch became aware of fraudulent business practices claims against Appellant and her businesses and decided that The Journal could not accept advertising from "folks engaged in that much—level of litigation" (Welch Dep. p. 57, ln. 25-p. 58, ln. 15). [16] He therefore instructed Larry Davidson, The Journal's Advertising Manager, to advise Appellant it was discontinuing advertising for her companies (Davidson Dep. p. 12, ln. 9-20).[17]

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[15] This email was attached as Exhibit "21" to Plaintiff's deposition.

[16] Mr. Welch's deposition testimony referenced herein is attached as Exhibit "19" to Respondents' Summary Judgment Memorandum.

[17] Mr. Davidson's deposition testimony referenced herein is attached as Exhibit "20" to Respondents' Summary Judgment Memorandum.

Mr. Davidson advised Appellant of same in an August 31, 2021, email stating, "furthermore, our attorney has advised us to hold off on publishing advertising for any of your companies for a bit of time" (See Ex. 18 to Respondents' Summary Judgment Memorandum). Although Appellant assumes this attorney is Mr. McDuff, she confessed this is just a "hunch." (Pierce Dep. p. 197, ln 14-17). She also conceded no one at The Journal identified Mr. McDuff as the attorney who rendered this advice, nor has she seen any documentary proof of same (Pierce Dep. p. 197, ln. 1-4; p. 198, ln. 2-8). Mr. Davidson does not know Mr. McDuff and has never met him (Davidson Dep. p. 12, on. 2-5). Mr. Welch does not recall receiving any instruction from counsel to discontinue advertising Plaintiff's products (Welch Dep. p. 59, ln. 9-17). According to Jerry Edwards, neither Richard McDuff nor anyone at MJM Law, LLC at any time requested, encouraged, demanded, advised, proposed, or suggested that The Journal discontinue its advertising for Appellant or her companies (Edwards Aff'd ¶ 4, attached as Exhibit "21" to Respondents' Summary Judgment Memorandum).

Appellant's Alleged Damages

On April 4, 2023, the Trial Court entered an Order sanctioning Appellant for her refusal to participate in discovery thereby limiting those documents she may present in support of her damages claim to Exhibits 1, 2 & 3, produced by Appellant in response to the Trial Court's Order of February 13, 2023.[18] These documents pertain to Appellant's alleged customer information, and were filed under seal at the Court's March 22, 2023, hearing on Respondents' Motion for Sanctions pursuant to a Protective Order entered February 14, 2023.[19]

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[18] The April 4, 2023, Sanctions Order is attached as Exhibit "22" to Respondents' Summary Judgment Memorandum.

[19] The February 14, 2023, Protective Order is attached as Exhibit "23" to Respondents' Summary Judgment Memorandum.

Without divulging any confidential information within them, Exhibits 1, 2 & 3 may be identified as a Tradekey Report, a Thomasnet Report, and a spreadsheet Appellant prepared concerning her damages. They were attached as Exhibits 37, 38 & 39 to Appellant's deposition respectively, about which she was questioned extensively. Pursuant to paragraph 10 of the Protective Order, if deposition testimony concerning Confidential Information is elicited, counsel for the designating party (here, the Appellant) may request that the testimony, and the transcript thereof (including any exhibits) be treated as "Confidential" and portions of a deposition transcript (and/or exhibits) be treated as Confidential Information, provided such request is made within thirty (30) days of receipt of the final transcript. During her deposition, Appellant did not request that any of the testimony concerning these documents be treated as Confidential, nor has she ever requested that portions of the deposition transcript or exhibits be treated as Confidential Information. Nevertheless, Respondents will not identify by name the customers referenced in these Exhibits.

1. The Tradekey Report

Tradekey is an organization that puts together potential customers with vendors (Pierce Dep. p. 375, ln. 13-16). Customers reach out directly to Tradekey with inquiries which in turn communicates with the vendor, such as Appellant, through an intermediary (Pierce Dep. p.376, ln. 3-7). Appellant admits that the Tradekey Report is just a list of inquiries, and not solid orders for her business' products (Piece Dep. p. 373, ln. 16-21). At no time did Tradekey advise Appellant that any of these inquiries resulted in orders (Pierce Dep. p. 376, ln. 9-12). Moreover, all of these inquiries preceded the March 2022 Articles (Pierce Dep. p. 373, ln. 25-p.374, ln. 3). Thus, Appellant concedes that the failure of these potential customers to order product had nothing to do with the Articles at issue in this lawsuit (Pierce Dep. p. 374, ln. 25-p. 375, ln. 7). Appellant even

admitted that whether potential sales may have been lost to these Tradekey customers is just speculation on her part (Pierce Dep. p. 378, ln. 3-8).[20]

2. The Thomasnet Report

Thomasnet is an organization similar to Tradekey, although it caters more to an American Market (Pierce Dep. 378, ln.25-p.379, ln. 12). Appellant admits that the volume of the Thomasnet inquiries did not decrease after the publication of the March 2022, Articles (Pierce Dep. p. 382, ln. 1-5). To the contrary, the volume of Thomasnet inquiries increased after the Articles' publications (Pierce Dep. p. 380, ln. 18-21). Plaintiff knows of no Thomasnet inquiries resulting in actual orders (Pierce Dep. p. 382, ln. 19-24). She concedes that whether the Thomasnet inquiries would have led to actual orders is a matter of speculation (Pierce Dep. p. 382, ln. 25-p.383ln. 6).

3. Plaintiff's Spreadsheet

Finally, Appellant prepared a spreadsheet of her alleged damages with estimates of revenue. They are delineated by category: (i) "initial investment;" (ii) "customers with letters of intent;" (iii) "pro forma customers;" and (iv) "online sales." Appellant agrees that her "initial investment" figure is subject to reduction, as the machinery used to calculate same can be re-used (Pierce Dep. p. 386, ln. 21-p.387, ln. 1). Of the three "letters of intent" customers, one cancelled its order because of delayed delivery which Appellant attributes to sabotaged machinery unrelated to Rick McDuff (Pierce Dep. p. 357, ln. 6- p. 358, ln. 2-14). The second customer never issued a letter of intent at all (Pierce Dep. p. 389, ln. 11-22). Appellant knows of no document from her third "letters of intent" customer stating it was discontinuing its business with Appellant due to the March, 2022, Articles, nor did this alleged client tell her so (Pierce Dep. p. 348, ln. 25-p.349, ln.

[20] Plaintiff also admitted that most of the damages related to Tradekey customers are due to Clements Electrical's actions, not Mr. McDuff's (Piece Dep. p. 391, ln. 16-392, ln. 3).

25). Next, all of the "proforma customers" are Thomasnet and Tradekey inquiries to which her answers about these organizations would apply (Pierce Dep. p. 391, ln. 4-14). Finally, Appellant confessed that her "online sales" figures are all speculative projections (Pierce Dep. p. 394, ln. 5-9; p. 396, ln. 3-8; p. 397, ln. 14-p.398, ln. 2).

Summary Judgment Was Properly Granted on Plaintiff's Defamation Claim

"[T]o prove defamation, the plaintiff must show: (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). The Trial Court correctly held that Appellant cannot prove these elements here as there is no evidence Respondents made a false or defamatory statement.

As noted above, the defamatory statements which Respondents are accused of making are the three Articles appearing in The Journal on March 4, 5 & 8, 2022. (Pierce Dep. p. 106, ln. 8-12). Appellant has conceded, however, that she has no evidence Respondents were the source of same. (**March 4 Article** – Pierce Dep. p. 129, ln. 3- p.130, ln 4; p. 131, ln. 21- p. 132, ln. 6; p. 140, ln. 10-24); (**March 5 Article** – Pierce Dep. p. 159, ln. 18-p. 161, ln. 6; p. 163, ln. 9-p. 164, ln.4); (**March 8 Article** – Pierce Dep. p. 165, ln. 15-18; p. 169, ln. 19-170, ln. 3; p. 174, ln. 13-16; p. 174, ln. 22-p. 175, ln. 7; p. 175, ln. 20-p. 176, ln. 2). Moreover, the author of these Articles, Riley Morningstar, testified – in unrebutted fashion – that they were not based on discussions with Respondents, nor did they request, encourage, demand, advise, or suggest that The Journal publish these Articles (Morningstar Aff'd ¶ ¶ 25, 28 & 30). As there is no evidence Respondents made a defamatory statement, the Trial Court correctly entered summary judgment on the issue. *Abbott v. Pollock*, 946 S.W.2d 513, 520 (Ct. App. Tx, 1997) (summary judgment granted on defamation claim due to lack of evidence defendants made the statements at issue); *Crouch v. J.C. Penny*

Corporation, Inc. 564 F. Supp.2d 642, 649 (E.D. Tex., 2008) (plaintiff must establish some connection that the defendant is indeed the source of the allegedly defamatory statements); *Sullivan v. Young,* 678 S.W.2d 906 (Ct. App. Tenn., 1984) (action for libel was not viable absent proof establishing a connection between defendants and the alleged libel); *Riisna v. American Broadcasting Companies, Inc.,* 219 F. Supp.2d 568 (2002) (failure to establish necessary connection between allegedly defamatory statements and their source precluded defamation claim).

Appellant also maintains that Mr. McDuff provided the ACFIM Report – which was on the Internet – to Riley Morningstar and "pushed it to be published by his friends / "made it to be published," which was a defamatory act (Pierce Dep. p. 130, ln. 23-p. 131, ln. 6; p. 132,ln. 3-6). As Mr. Morningstar has made clear, neither Mr. McDuff nor anyone in his firm requested, encouraged, demanded, advised, proposed or suggested that The Journal publish anything about the ACFIM Report (Morningstar Aff'd ¶ 20). Appellant merely suspects as much, claiming Mr. McDuff had the "motive" to do so (Pierce Dep. p. 132, ln. 16-133, ln. 5).

Clearly, Appellant's contention that Respondents had anything to do with the publication of the Articles at issue in this suit is based on conjecture, speculation and suspicion. These unfounded and unsupported allegations cannot survive summary judgment, so that Appellant's defamation claim fails as a matter of law. *McKnight v. S.C. Dep't of Corrs.,* 385 S.C. 380, 390, 684 S.E.2d 566, 571 (Ct.App.2009) (To survive summary judgment, the evidence presented must amount to more than mere speculation and conjecture); *Integrated Consulting Services, Inc. v. LDDS Communications, Inc*., 176 F. 3d 475 (4th Cir., 1999) (suspicion is insufficient to create a genuine issue of fact precluding summary judgment); *Thomas v The University of South Carolina,* No. C.A. 3:04-0628-MBS, 2006 WL 2521592 at *7 (D.S.C. , Aug 31, 2006) (self serving and conclusory statements without any evidentiary support is insufficient to survive summary

judgment); *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985) (A party opposing summary judgment "cannot create a general issue of fact through mere speculation or by the building of one inference upon another."); *Walker v. The University of South Carolina,* No. 3:04-624-MBS, 2006 WL 2521608 at *7, D.S.C., Aug 31, 2006) (an "opposing party's facts must be material and of a substantial nature, not fanciful, ... conjectural, speculative, nor merely suspicions").

Summary Judgment Was Properly Granted on Plaintiff's Contractual Interference Claim

In paragraphs 66-69 of her Amended Complaint, Appellant accuses the Respondents of interfering with her alleged advertising contract with The Journal, resulting in her purportedly losing business from current and prospective customers (Pierce Dep. p. 214, ln. 12-p.215, ln. 2). To establish a cause of action for tortious interference with contractual relations, a plaintiff must show: 1) the existence of a contract; 2) knowledge of the contract; 3) intentional procurement of its breach; 4) the absence of justification; and 5) resulting damages." *Eldeco, Inc. v. Charleston Cty. Sch. Dist.,* 372, S.C. 470, 642 S.E.2d 726, 731 (S.C. 2007). The Trial Court correctly found that Appellant cannot prove elements Nos. 1, 3, or 5.

Appellant had no Contract with The Journal

As Appellant has admitted, the advertising contract at issue in this case was one between American Pharma Machinery, LLC, and The Journal, not between Appellant and The Journal (Pierce Dep. p. 194, ln. 17-p. 195, ln 4). This LLC is incorporated in South Carolina, located at 708 Mourning Dove Lane, Seneca, SC. (Pierce Dep. p. 67, ln. 15-24). Appellant is its sole member (Pierce Dep. p. 67, ln. 25-p. 68, ln. 3). A limited liability company is a legal entity separate from its members. S.C. Code § 33-44-201.[21] As a result, "a shareholder or member of a corporation

[21] The only exception to this rule is found in S.C. Code § 12-2-25 (B)(1) which holds a single member LLC is not regarded as an entity separate from its owner only for South Carolina tax purposes which does not tax such an LLC as a corporation.

or LLC may not recover for tortious interference of the business or contract of the corporation or LLC." *Baron Financial Corporation v. Natanzon, et al* ,471 F. Supp. 2d 535, 540 (D. Md., 2006); *Painter's Mill Grille, LLC v. Brown*, 716 F.3d 342, 349 (4th Cir. 2013) (holding LLC members lacked standing to bring claims for tortious interference with contract when they were not parties to the contract and the injuries suffered derived entirely from the injury their company allegedly sustained); *First Commercial Bank, N.A. v. Walker,* 333 Ark. 100, 109, 969 S.W.2d 146, 150 (1998) (sole shareholder lacked standing to bring claim for tortious interference with the company's contracts).

As Appellant has no standing to assert an interference with contract claim, summary judgment was appropriate for Respondents.[22]

Respondents did not Cause The Journal to Breach any Contract with Appellant

In August 2021, Hal Welch, at the time the General Manager of The Edwards Media Group, became aware of fraudulent business practices claims against Plaintiff and her businesses and decided that The Journal could not accept advertising from "folks engaged in that much—level of litigation" (Welch Dep. p. 57, ln. 25-p. 58, ln. 15). The Journal discontinued the advertising as a result. Although Appellant assumes Mr. McDuff was responsible for this decision, she confessed this is just a "hunch." (Pierce Dep. p. 197, ln 14-17). The uncontradicted evidence reveals that neither Richard McDuff nor anyone at MJM Law, LLC at any time requested, encouraged, demanded, advised, proposed, or suggested that The Journal discontinue its advertising for Appellant or her businesses (Edwards Aff'd ¶ 4). As Appellant failed to prove Respondents

[22] Appellant cites *Huggins v. Citibank, N.A.* 355 S.C. 329, 585 S.E.2d 275 (2003) in support of her position that she has standing to assert a tortious interference claim as the sole member of an LLC. *Huggins* said no such thing. It simply held that South Carolina does not recognize the tort of negligent enablement of imposter fraud.

intentionally procured The Journal's alleged breach of contract, summary judgment was properly granted on this claim. *Nave v. Life Bank*, 224 B.R. 586 (M.D. Tenn., 2005) (lack of evidence that lender acted with intent to induce brokerage to breach its agreement with debtors precluded lender's liability for wrongful inducement of breach of contract*); Furness Withy , Inc. v. World Energy Systems Associates, Inc*., 772 F.2d 802 (11th Cir., 1985) (summary judgment on tortious interference with contract claim affirmed because there was no evidence of same).

Appellant Did Not and Cannot Prove any Damages as the Result of the Alleged Breach

Finally, Appellant must prove damages resulting from Respondents alleged interference with The Journal advertising contract. She contends this damage is the purported loss of business from current and prospective customers (Pierce Dep. p. 214, ln. 12-p.215, ln. 2). In short, she contends customers "stopped coming" as a result of the lost advertising. (Pierce Dep. p. 200, ln. 19-23). As is discussed above, these alleged damages are far too speculative to be proven, so that this element of her contractual interference claim cannot be met. Summary judgment on this issue was therefore appropriate. *Pickett v. HCA Hospital Corporation,* 199 F.3d 440 (5th Cir., 1999) (tortious interference claim failed due to lack of proof of damages); *HRH, LLC v. Teton County, Wyoming,* 596 F. Supp. 3d 1275 (D. Wy., 2022) (speculative damages precluded tortious interference claim even if plaintiff established defendants intentionally and improperly caused contract's expiration); *P.M.S. Enterprises, Inc., v. North*, 24 B.R. 523, (N.D. Ill., 1982) (tortious interference claim failed because plaintiff could not prove required element of damages in the form of lost profits. Same cannot be recovered where they are speculative, contingent or uncertain).

CONCLUSION

For the reasons stated herein, Respondents respectfully request that the Trial Court's Order granting their Motion for Summary Judgment be Affirmed.[23]

Respectfully submitted this 7th day of March, 2025.

s/ Charles A. Kinney
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[23] Beginning on page 35 of her Brief, Appellant argues her due process rights were violated because she did not review the Formal Summary Judgment Order entered April 2, 2024, before it was signed. This formed the basis of a Motion to Vacate Filed by Respondent on July 19, 2024, which was denied via a Form 4 Order on January 28, 2025. Without more, the Order simply stated "Denied as improper. No formal Order requested." That Order was silent regarding the basis for its decision. In light of this procedural posture, it was incumbent upon Respondent to file a motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to request that the Trial Court provide specific factual findings for its decision. *See Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (holding that where a trial court does not explicitly rule on an argument raised, and appellant makes no Rule 59(e) motion to obtain a ruling, the appellate court may not address the issue); *Floyd v. Floyd*, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct.App.2005) ("When a trial judge makes a general ruling on an issue, but does not address the specific argument raised by the appellant and the appellant does not make a motion to alter or amend pursuant to Rule 59(e), SCRCP, to obtain a ruling on the argument, the appellate court cannot consider the argument on appeal."). Regardless, Motions to Vacate are governed by Rule 60(b). Respondent has not made the requisite showing under sub-parts (1)-(5) to vacate the Summary Judgment Order.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
R. Lawton McIntosh, Circuit Judge
Common Pleas Case No. 2022-CP-37-00182

Appellate Case No. 2024-000739

Dorothy Pierce,

Appellant,

v.

Richard Hunt McDuff; MJM Law LLC,

Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of March, 2025, he electronically filed the foregoing **Respondents Richard Hunt McDuff's and MJM Law, LLC's Initial Brief** using the South Carolina Court of Appeal's electronic OneDrive filing system, and further certifies that he has served the pro se Appellant and all counsel of record with a true and accurate copy of same by depositing a copy in the United States Mail, with first-class postage affixed thereon, and by electronic mail, as follows:

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