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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

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

Appellate Case No. 2024-001012
Circuit Court Case No. 2022-CP-23-056246

Chris Williams, ...Appellant,

v.

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

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This case arises from the unlawful termination of Chris Williams ("**Williams**") as the Chief Executive Officer of applya Occupational Strategies, LLC ("**applya**"), and applya's refusal to pay Williams' salary and non-discretionary bonus owed pursuant to his employment agreement. Since his tenure began on April 1, 2018, Williams earned numerous stock options, bonuses, and annual raises, in addition to his salary. At no point during Williams' employment did applya communicate problems or concerns with Williams' performance. In fact, due to Williams' successful performance as the CEO, applya extended Williams' term of employment in July 2020 by way of an amendment to his employment agreement.

In August 2022, applya was struggling financially from gross under-capitalization and, as a result, Williams suggested to applya and its former owners and members of applya's Board of Directors, Felix Mirando and Tom Baumgarten, (collectively, "**Respondents**"), and Andrew Garnock[1] that he take a different role within applya to focus on business development and reduce some of the financial strain on the company. In response, applya's owners requested additional information from Williams about his proposal to change roles within the company. Exactly one week after applya sought additional information, and while Williams was gathering the information, applya issued a no-confidence vote finding that "good cause" existed under the employment agreement to terminate Williams' employment. Two weeks later, applya terminated Williams' employment.

[1] Although a named defendant and former member of the Board, Garnock did not join in applya, Mirando, and Baumgarten's Motion for Partial Summary Judgment and is therefore not named as a Respondent in this Appeal. Felix Mirando, Tom Baumgarten, and Andrew Garnock, were the owners and members of applya's Board of Directors. applya officially closed its doors on December 31, 2023. (**R. p. 77, lines 19-21**).

Applya's pre-meditated "good cause" finding was integral in avoiding the requirement that applya remit to Williams his salary and non-discretionary bonus owed upon termination. In particular, Williams' employment agreement required applya to remit to Williams an amount equal to two years of his current salary and a non-discretionary bonus, four weeks of vacation, and several other benefits upon termination "without Cause." However, in order to avoid paying Williams the salary and non-discretionary bonus that were due to him, applya declared that Williams was terminated for "good cause," which provided an avenue to refuse payment. Williams disputes that applya had "good cause" to terminate his employment, and asserts that applya owes Williams his salary and non-discretionary bonus under the terms of the employment agreement.

Williams brought several claims against Respondents and Andrew Garnock related to his unlawful termination, including breach of contract, breach of contract accompanied by fraudulent act, piercing the corporate veil, and violation of the South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10, *et seq.* (the "**Act**"). Under his Payment of Wages claim, Williams seeks remittance of his salary and non-discretionary bonus owed to him by applya upon his termination. If Williams is successful on his Payment of Wages claim, applya's owners would also be individually liable to Williams for these monies, and Williams would be entitled to recover treble damages plus attorneys' fees and costs against Respondents and Garnock.

Respondents moved the circuit court for partial summary judgment on Williams' Payment of Wages claim seeking to classify Williams' salary and non-discretionary bonus owed to him upon termination as not "wages" under the Act. After reviewing legal memoranda from the parties and presiding over a hearing, the circuit court granted partial summary judgment to Respondents on the basis that Williams' salary and non-discretionary bonus due upon termination were not "wages" under the Act.

As addressed in more detail below, the circuit court not only misapprehended the relevant provisions of the Act—noting that the law may be "subject to another interpretation"—and misinterpreted South Carolina Supreme Court precedent, the circuit court also did not conduct the necessary analysis to resolve what it termed a "questionable" application of the law to the facts. Accordingly, this court should reverse the circuit court's order granting partial summary judgment.

STATEMENT OF FACTS

I. Employment Agreement

On April 1, 2018, Williams entered into an employment agreement (the "**Employment Agreement**") with applya for the position of Chief Executive Officer. (**R. pp. 28-43**). Pursuant to the Employment Agreement, applya agreed to pay Williams an annual salary of $250,000, with an agreed upon annual increase of $25,000 on each anniversary (the "**Salary**"). (**R. p. 30**). In addition to his Salary, applya also agreed to pay Williams an annual non-discretionary bonus equal to 2.0% percent of the annual Operating Income of applya (the "**Non-Discretionary Bonus**"). (**R. p. 30**).

In consideration for the services rendered during his employment, applya agreed to continue to pay Williams his Salary and Non-Discretionary Bonus for a period of two years in the event applya terminated Williams' employment "without Cause."[2] (**R. p. 32**). In particular, Section 6.4 of the Employment Agreement sets forth the following:

> 6.4 Termination of Compensation.
>
> (a) Except as otherwise required by non-waivable provisions of applicable law, in the event that either **Employee's employment is terminated by the Board without Cause** or by Employee with Good Reason (in each case excluding such Employee's death or Disability), 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.

[2] For purposes of this appeal, it is presumed that Mr. Williams was terminated without Cause.

(b) In the event the Employee's Employment is terminated by the Board with Cause or by 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 or effect.

(**R. p. 32)** (emphasis added). Williams successfully performed his role as Chief Executive Officer at applya for several years. On July 15, 2020, based on his strong performance with applya, Williams and applya executed an amendment to the Employment Agreement that extended Williams' employment term and provided Williams with additional benefits ("**Amendment to the Employment Agreement**"). (**R. pp. 45-47**).[3]

II. Unlawful Termination of Employment with applya

Problems with Williams' compensation started after 2020. For example at the end of 2020, applya had an annual Operating Income of approximately $2,800,000.00. (**R. p. 20, ¶ 20**). Under the Employment Agreement, this entitled Williams to a Non-Discretionary Bonus in the amount of $56,000.00 in January 2021. (**R. p. 20, ¶ 20**). (**R. p. 30, Section 3.2**). However, Williams never received the Non-Discretionary Bonus he was owed. By way of another example, during the course and scope of his employment as the Chief Executive Officer for applya, Williams incurred business expenses totaling approximately $21,000. (**R. p. 21, ¶ 21**). Williams sought reimbursement from applya for these expenses in accordance with the Employment Agreement, but applya never reimbursed Williams. (**R. p. 21, ¶ 21; R. p. 22, ¶ 28**).

On August 16, 2022, Williams approached Respondents and expressed an interest in moving into a new position with applya. (**R. p. 21, ¶ 22**). Principally, Williams proposed to Respondents that they allow him to step down from the CEO role and take on roles for applya

[3] The Amendment to Employment Agreement did not alter, amend, or delete Section 6.4 of the Employment Agreement.

related to technology and business development. (**R. p. 16-52**). Williams informed Respondents that the reason, in part, for this request was that Williams sought to reduce costs and eliminate the company's current selling, general, and administrative expenses. (**R. p. 16-52**). On September 15, 2022, Williams emailed Respondents and reiterated his request to move into a new role with applya. (**R. p. 21, ¶ 24; R. pp. 138-141**). Within the email, Williams provided several items for applya to consider including, but not limited to, amending the Employment Agreement to properly address his new role. (**R. pp. 138-141**).

On September 22, 2022, Respondents replied to Williams' email and sought "further clarification / comments with some of [Williams'] proposals." (**R. p. 21, ¶ 24; R. pp. 48-52**). Seven days later, while Williams was in the process of providing a response, Respondents, in an about-face, emailed Williams stating that Respondents had issued a no-confidence vote pertaining to Williams' employment and that "good cause" existed to terminate Williams' employment. (**R. p. 22, ¶ 26; R. p. 143**). This was the first time Williams had received any communication or indication that Respondents did not have confidence in Williams' ability to lead applya and allegedly "good cause" existed to terminate his employment. (**R. p. 22, ¶ 27**). By this time, applya's financial struggles resulting from Respondents' gross under-capitalization of the business had become evident. In a coy effort to shield themselves from liability and hide behind a defunct company, Respondents fabricated "good cause" to terminate Williams' employment to avoid paying Williams the wages he was owed upon termination. Two weeks later, on October 14, 2022, Respondents unlawfully terminated Williams' employment. (**R. p. 22, ¶ 29**).

Williams vehemently denies that he was terminated from his employment with "good cause," contending that he was terminated "without Cause" and is, therefore, entitled to two years

of his Salary,[4] two years of Non-Discretionary Bonus, and two years of Williams' other benefits under the Employment Agreement. Williams contends that applya fabricated "good cause" to terminate his Employment Agreement in an effort to fraudulently avoid paying Williams the wages the parties negotiated and agreed upon.

III. Procedural History

Williams commenced this action on November 14, 2022, asserting causes of actions for (i) violations of the Act, (ii) piercing the corporate veil, (iii) breach of contract, and (iv) breach of contract accompanied by fraudulent act against Respondents and Garnock for Williams' unlawful termination. (**R. pp. 16-52**). Williams seeks, in pertinent part, actual and treble damages for Respondents' willful retention of his wages, including two years of his Salary and Non-Discretionary Bonus that were due upon termination pursuant to the Employment Agreement, as well as attorneys' fees and costs. (**R. pp. 16-52**). Respondents filed their Answer to Williams' Complaint on December 15, 2022, denying any wrongdoing and asserting counterclaims for breach of contract, breach of duty of loyalty, breach of fiduciary duties, and conversion alleging that Williams did not devote all of his business time into applya and that Williams sought reimbursement for unreasonable expenses. (**R. pp. 53-67**).

On December 1, 2023,[5] Respondents filed a Motion for Partial Summary Judgment[6] seeking "an Order from the Court limiting the potential damages recoverable pursuant to the South

[4] Williams' current annual salary at this time was $350,000.00; thus, applya was required to pay Williams $700,000.00, equaling two years of his current annual salary. (**R. p. 22, ¶ 30**).

[5] Thirty (30) days after filing their Motion for Partial Summary Judgment, Applya permanently closed its business on December 31, 2023. (**R. p. 77, lines 19–21**).

[6] At the time Respondents filed their Motion for Partial Summary Judgment, discovery was not complete. Although the parties have engaged in written discovery, no depositions have been conducted to date.

Carolina Payment of Wages Act."[7] (**R. p. 85**). On January 2, 2024, Respondents filed a Memorandum in Support of their Motion for Partial Summary Judgment contending that Williams' claim for damages relating to his Salary and Non-Discretionary Bonus were not "wages" as that term is defined under the Act and, therefore, Williams could not recover treble damages and attorneys' fees as a result of Respondents' failure to pay Williams the amounts due under the Employment Agreement. (**R. pp. 85-90**). The crux of Respondents' Motion for Partial Summary Judgment relied on the argument that because Williams' Employment Agreement established that his Salary and Non-Discretionary Bonus were to **"continue to be"** paid upon his termination for a period of two years **into the future**, Williams' Salary and Non-Discretionary Bonus were "future wages" and, thus, not covered under the Act. (**R. p. 89**).

On January 5, 2024, Williams filed his Memorandum in Opposition to Respondents' Motion for Partial Summary Judgment on the basis that summary judgment was not proper because Williams' Salary and Non-Discretionary Bonus were only owed and due to him **upon termination** of the Employment Agreement. (**R. pp. 107-148**). As a result, Williams' Salary and Non-Discretionary Bonus could only arise out of the services he **previously performed for applya during his employment** and were therefore not "future wages." (**R. pp. 107-148**). On January 8, 2024, the circuit court held a hearing, and on January 10, 2024, the court entered a Form 4 Order Granting Respondents' Motion for Partial Summary Judgment and requested Respondents' counsel to prepare a formal order. (**R. pp. 3-5**). On January 16, 2024, the court entered a Formal

[7] Because applya is defunct, Respondents' Motion for Partial Summary Judgment sought to bar Williams' sole remaining avenue of recovery: the individual liability against its former owners, Felix Mirando and Tom Baumgarten, for violating the Act. *See Dumas v. InfoSafe.*, 320 S.C. 188, 195, 463 S.E.2d 641, 645 (Ct. App. 1995) ("[W]e hold the legislature intended to impose individual liability on agents or officers of a corporation who knowingly permit their corporation to violate the Act.").

Order granting Respondents' Motion for Partial Summary Judgment. (**R. pp. 6-12**). On January 24, 2024, Williams filed a Motion to Reconsider along with his Memorandum in Support. (**R. pp. 149-166**). On January 31, 2024, Respondents filed their Memorandum in Opposition. (**R. pp. 167-170**). On May 14, 2024, the circuit court denied Williams Motion to Reconsider. (**R. pp. 13-15**). Thereafter, Williams filed a Notice of Appeal with the circuit court and this Court on June 12, 2024. (**R. pp. 171-182**).

STANDARD OF REVIEW

"Even if there is no dispute as to the evidentiary facts, summary judgment is not appropriate where there is a dispute as to a conclusion to be drawn from those facts and to clarify the application of the law." *Mayer v. M.S. Bailey & Son*, 347 S.C. 353, 358, 555 S.E.2d 406, 408 (Ct. App. 2001) (emphasis added) (citing *Tupper v. Dorchester Cty.*, 325 S.C. 318, 325, 487 S.E.2d 187, 191 (1997)). "Summary judgment is appropriate only where it is **perfectly clear** that no genuine issue of fact is involved and inquiry into the facts is not desirable to clarify the application of the law." *Hook v. Rothstein*, 275 S.C. 187, 189, 268 S.E.2d 288, 289 (1980) (emphasis added). "All ambiguities, conclusions, and inferences arising from the evidence must be constructed **most strongly** against the movant." *Tupper*, 325 S.C. at 326, 487 S.E.2d at 191 (emphasis added) (citing *Baugus v. Wessigner*, 303 S.C. 412, 401 S.E.2d 169 (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 Condos., LLC*, 441 S.C. 223, 232, 892 S.E.2d 532, 537 (Ct. App. 2023) (quoting *Stoneledge at Lake Keowee Owners' Ass'n v. Clear View Constr., LLC*, 413 S.C. 615, 620, 776 S.E.2d 426, 429 (Ct. App. 2015)). Appellate courts apply the same standard as circuit courts when reviewing a grant of summary judgment. *Kitchen Planners, LLC v. Friedman*, 432 S.C. 267, 275, 851 S.E.2d 724, 729 (Ct. App. 2020) (quoting *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006)).

"[The appellate court is] **free to decide a question of law with no particular deference to the circuit court.**" *Catawba Indian Tribe of South Carolina v.* State, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007) (emphasis added).

ARGUMENT

The issues before this Court on appeal are exceptionally narrow. Respondents' Motion for Partial Summary Judgment and the circuit court's Formal Order focused solely on the issue of whether Williams' Salary and Non-Discretionary Bonus due upon termination were "wages" covered under the Act. The circuit court did not decide whether Williams was in fact terminated with or without Cause, nor does this Court need to make such a determination. This Court simply needs to determine whether the circuit court erred as a matter of law in finding that Williams' Salary and Non-Discretionary Bonus due upon termination are not "wages" covered under the Act. In appealing the circuit court's ruling, Williams asserts that the Formal Order suffers from procedural errors related to the standard of review applied by the circuit court, as well as substantive errors in the circuit court's application of the relevant provisions of the Act. For each and all of these reasons more fully explained below, Williams respectfully requests the Court to reverse the Formal Order granting partial summary judgment to Respondents.

I. The Circuit Court Did Not Correctly Apply the Standard of Review for a Motion for Summary Judgment, Nor for Ascertaining the General Assembly's Intent.

In granting partial summary judgment to Respondents on the issue of whether Williams' Salary and Non-Discretionary Bonus due upon termination are "wages" covered under the Act, the circuit court stated the following in its Formal Order:

> In reaching this conclusion, the Court contends that while the language in Section 41-10-10 et. seq. (the "Act") **may be subject to another interpretation**, the Court believes that it is **questionable** as to whether the General Assembly intended for the Act to apply to the facts in this case. 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. As

> such, the Court determines as a matter of law that the Plaintiff is unable to seek these specific damages under his claim for violation of the Wage Payment Act, and instead, can only seek recovery for labor rendered, if any.

(**R. p. 11**) (emphasis added). The circuit court's findings are incorrect for several reasons. First, summary judgment is only appropriate if the movant is entitled to judgment as a matter of law. Here, the Order states that the law "may be subject to another interpretation" and it is "questionable" whether the Act should apply to the facts in this case, indicating that the Court was not clear on whether Respondents were entitled to judgment as a matter of law. Second, the circuit court questioned as to what the General Assembly intended in the Act, but did not engage in the required components of statutory construction to ascertain the legislative intent. Instead, the circuit court summarily and without explanation stated its own "belief" about the purpose of the Act and granted partial summary judgment to Respondents on that basis.

a. Summary Judgment Was Improper Because the Application of the Law to the Facts Was Unclear

South Carolina Supreme Court has held that "summary judgment is appropriate only where it is perfectly clear that no genuine issue of fact is involved and inquiry into the facts is not desirable to clarify the application of the law." *Hook*, 275 S.C. at 189, 268 S.E.2d at 289. "Even if there is no dispute as to evidentiary facts, summary judgment is not appropriate where there is a dispute as to a conclusion to be drawn from those facts and to clarify the application of the law." *Mayer*, 347 S.C. at 358, 555 S.E.2d at 408. In *Shea v. Department of Mental Retardation*, this Court held that the circuit court improperly granted summary judgment because the construction of a statute and its application to the parties was not clear, stating "if the statute's application is not absolutely clear as a matter of law, [the] question should not be decided without fully developing the facts by means of trial." 279 S.C. 604, 611, 310 S.E.2d 819, 822 (Ct. App. 1983), *overruled on other grounds by McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985).

Here, the circuit court held Williams' Salary and Non-Discretionary Bonus were not recoverable under the Act while contemporaneously holding that it was "questionable" whether the Act applied to the facts of this case. (**R. p. 11**). Moreover, the circuit court declared that the Act may be subject to another interpretation, further calling into question the circuit court's decision to dispose of Williams' claim under the Act before the close of discovery and a trial on the merits. At a minimum, the circuit court's Formal Order demonstrates that further inquiry into the facts is desirable to clarify the application of the law in this case. *Hook*, 275 S.C. at 189, 268 S.E.2d at 289. Accordingly, the court erred in granting summary judgment when the construction of the Act and its application to Williams' Salary and Non-Discretionary Bonus were not "absolutely clear as a matter of law." *Shea*, 279 S.C. at 611, 310 S.E.2d at 822.

b. Summary Judgment Was Improper Absent An Analysis of the General Assembly's Intent

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where a statute is plain and unambiguous and conveys a clear and definite meaning, courts are not empowered to impose any other meaning. *Id.* But where the "plain language of the statute lends itself to two equally logical interpretations," courts "**must apply the rules of statutory interpretation** to resolve the ambiguity and to discover the intent of the General Assembly." *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 348, 549 S.E.2d 243, 247 (2001) (emphasis added). For example, a canon of statutory construction is that "[a] statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. The real purpose and intent of the lawmakers will prevail over the literal import of the words." *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992) (citations omitted). Another canon of statutory construction is that "[a] court should not consider a particular clause in a statute as being

construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law." *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 232, 612 S.E.2d 719, 724 (Ct. App. 2005).

Here, the circuit court held the Act may be subject to multiple interpretations and questioned whether the General Assembly intended for the Act to apply to the facts of this case. Rather than implementing the requisite rules of statutory construction to ascertain the legislative intent and resolve any ambiguities raised by the facts in this case, the circuit court simply stated its own belief about the purpose behind the Act and acted accordingly. The circuit court did not analyze or explain, for example, how it determined the "real purpose and intent of the lawmakers" in excluding Williams' Salary and Non-Discretionary Bonus due upon termination from the ambit of the Act, nor how the particular clause in the Act defining "wages" could be "read in conjunction with the purpose of the whole statute and the policy of the law" to exclude Williams' Salary and Non-Discretionary Bonus upon termination.

Because the circuit court raised the question of legislative intent and noted that the Act may be subject to more than one interpretation, the circuit court erred by granting partial summary judgment without any application of the required rules of statutory construction. For this reason, the Court should reverse the circuit court's ruling.

II. The Circuit Court Erred in Concluding Williams' Salary and Non-Discretionary Bonus Due Upon Termination were Not for Services Rendered in the Past.

In addition to the procedural problems with the circuit court's Formal Order, the circuit court also erred in its application of the law to the facts of this case. Specifically, the circuit court erred in finding that Williams' Salary and Non-Discretionary Bonus due upon termination constituted "future wages" that are not covered under the Act. The circuit court based this decision on the Supreme Court's holding in *Mathis v. Brown & Brown of S.C. Inc.*, 389 S.C. 299, 698

S.E.2d 773 (2010). While *Mathis* provides an instructive analysis of the Act, the circuit court misinterprets *Mathis*' holding by concluding that the Supreme Court defines wages as when the wages are paid instead of when the services are performed. As addressed in more detail below, the gravamen of determining whether "wages" are encapsulated under the Act is **not when the wages are paid** but rather when the **services are performed**.

a. Wages for "Labor Rendered" Under the Act versus "Future Wages"

The Act seeks to protect employees from an employer's unjustified and willful retention of wages. *Rice v. Multimedia, Inc.*, 318 S.C. 95, 98, 456 S.E.2d 381, 383 (1995). The Act specifically defines "wages" as:

> **[A]ll amounts at which labor rendered is recompensed**, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments **which are due to an employee under any employer policy or employment contract**. Funds placed in pension plans or profit sharing plans are not wages subject to this chapter.

South Carolina Code Ann. § 41-10-10(2) (emphasis added).

In *Mathis*, the plaintiff, an employee, of the defendant, the employer, sought payment for the unearned portion of his salary following early termination of his two-year contract of employment. 389 S.C. 299, 698 S.E.2d 773. The two-year contract of employment guaranteed the employee a salary of $110,000 for the first year and $120,000 for the second year. *Id.* at 309, 698 S.E.2d at 778. Following the first year of his employment and within the first three months of his second year of employment, the employer informed the employee that he would be terminated prior to the completion of his second year of employment. *Id.* Following his early termination, the employee filed a lawsuit against his employer alleging the employer breached the employment agreement and violated the Act, arguing that the remaining, unearned portion of the salary owed to him for the latter half of the second year of his employment was for "wages." *Id.* The circuit

court held that the employer breached the employment agreement and awarded the employee, in relevant part, the "wages he would have earned for the remaining term of the contract." *Id.* at 307, 698 S.E.2d at 777.

On appeal, the Supreme Court reversed the circuit court and held that the employee's unearned salary was not "wages" under the Act because the employee had not yet earned the wages. *See id.* at 318–19, 698 S.E.2d at 783–84. In doing so, the Supreme Court examined the language of the Act, specifically analyzing "all amounts at which labor rendered is recompensed." *Id.* at 318, 698 S.E.2d at 783. The Supreme Court held that "[t]he past tense of the word 'rendered' suggests **services provided in the past**." *Id.* (emphasis added). The Supreme Court further stated that "[t]he word 'recompensed' too suggests that payment is **for labor already completed**." *Id.* (emphasis added) (citing Webster's Third New Int'l Dictionary 1897 (2002) (defining "recompensed" in part, as "an equivalent or a return for something done, suffered, or given")). The Supreme Court added that "[o]ther sections of the Payment of Wages Act speak of **acts done in the past**." *Id.* (emphasis added). Thus, the Court held that the Act only applied to **wages for services rendered in the past**, rather than for services to be performed in the future. *Id.* Ultimately, the Supreme Court found that the employee had not earned these wages because he had not worked the remaining portion of the time under his employment contract. *See id.* Accordingly, the Supreme Court deemed these unearned wages as "prospective wages," which are not covered by the Act. *Id.*

b. Williams' Compensation Upon Termination is for Labor Rendered, Not "Future Wages"

In the Formal Order, the circuit court found that Williams' is seeking future wages rather than wages for services rendered in the past, and therefore, Williams' Salary and Non-Discretionary Bonus were not covered by the Act. (**R. p. 11**). While the circuit court relied on

Mathis to issue its findings, the circuit court misinterpreted and misapplied *Mathis* by concluding that the Supreme Court defined wages as when the wages are paid instead of when the services are performed. (**R. pp. 10-11**); 389 S.C. 299, 698 S.E.2d 773. This is incorrect. As noted in subsection a, *supra*, the appropriate analysis to determine whether "wages" are covered under the Act is **not when the wages are paid** but rather when the **services are performed**. *See Mathis*, 389 S.C. at 318–19, 698 S.E.2d at 783–84. As addressed in more detail below, the circuit court did not identify or define any future labor to be rendered in order for Williams to "earn" his future wages, and candidly, it cannot do so. The reason the court could not do so is because, pursuant to the Employment Agreement, there are no additional services for Williams to perform as these wages are **due upon termination**. Accordingly, Williams' Salary and Non-Discretionary Bonus must be for services previously rendered.

The circuit court relied on *Mathis* to find that Williams' Salary and Non-Discretionary Bonus due upon termination constitutes future wages. But the facts in *Mathis are* distinguishable from the facts in the case at hand. Here, Williams' Salary and Non-Discretionary Bonus solely derive out of and are in consideration of the services Williams already rendered to applya. More specifically, pursuant to Williams' Employment Agreement, Williams is **only** entitled to his Salary and Non-Discretionary Bonus **upon termination**. Thus, it is impossible for him to perform any additional services to receive his Salary or Non-Discretionary Bonus.

Stated another way, Williams' Salary and Non-Discretionary Bonus owed upon termination is not a portion of his compensation that he would have received had he continued to work for applya. In *Mathis*, the employee sought payment for services that he had not performed and earned (*i.e.*, the employee still had several months left in his employment contract). The only way for the employee in *Mathis* to earn his future wages was to continue providing services in the

future. Whereas, in the case at hand, the only way Williams was entitled to his Salary and Non-Discretionary Bonus was to no longer provide services to applya (i.e., upon termination). Thus, Williams' Salary and Non-Discretionary Bonus due upon termination cannot be characterized as future wages.

Courts have routinely held that compensation due to an employee under an employment agreement similar to the one at issue here was for labor rendered, and thus, constituted wages. *See Stevenson v. Branch Banking & Tr. Corp.*, 159 Md. App. 620, 644, 861 A.2d 735, 749 (2004) (holding that contracted-for compensation based on the nature of the employee's service and promised upon termination is wages because it "represents deferred compensation for work performed during the employment"); *Ferry v. XRG Int'l, Inc.*, 492 So. 2d 1101, 1103–04 (Fla. Dist. Ct. App. 1986) (holding that employee's one year salary payout provided for in the employment contract if employee was terminated without cause constituted "wages" because it "**was an inducement to procure his services and to help ensure the continued quality of those services once he was employed**") (emphasis added); *Fang v. Showa Entetsu Co.*, 91 P.3d 419, 422 (Colo. Ct. App. 2003) (holding that two years of an employee's salary due upon termination constituted earned wages because the employment agreement required the employer to pay a sum certain upon termination without requiring the employee to perform any additional services; thus, the payment was determinable and vested upon entering the contract, and payable under the contract upon termination); *Heimenz v. Pennsylvania Power & Light Co.*, 75 Pa. D. & C.2d 405, 407 (Pa. Com. Pl. 1976) (rejecting the argument that payment upon termination was for future wages as it was "clearly intended to be a form of compensation for labor or services rendered over time" and thus, "could not have been earned at any other time except prior to termination"); *Willig v. Exiqon, Inc.*, 2012 U.S. Dist. LEXIS 662, at *36–37 (C.D. Cal. Jan. 3, 2012) (holding that

payment due under an employment agreement for termination without cause constitutes wages because eligibility for such payment "depends on performing job duties with due care, among other similar factors, which necessarily looks at *past* performance of job duties") (emphasis in original); *Kilian v. Int'l Soc'y of Interdisciplinary Eng'rs LLC*, 2023 Del. Super. LEXIS 22, at *20-21 (Super. Ct. Jan. 18, 2023) (holding that payment upon termination without cause constitutes wages because such payments are "designed to pay a terminated employee for their services previously rendered to their employer while they were still employed") (citing *United States v. Quality Stores, Inc.*, 572 U.S. 141, 134 S. Ct. 1395, 188 L. Ed. 2d 413 (2014)).

Furthermore, the language of the Employment Agreement unambiguously demonstrates that the wages in question are inextricably tied to Williams' performance of services during his employment with applya. Specifically, the provision stating that these wages are contingent upon Williams' termination being "without Cause" supports this construction. (**R. p. 32, Section 6.4(a)**). This condition indicates that the wages are earned based on Williams' satisfactory performance and contributions during his tenure. Moreover, the stipulation that these wages "shall be deemed forfeited" if Williams is terminated "with Cause" further solidifies the understanding that these wages are a direct reflection of past services rendered. (**R. p. 32, Section 6.4(b)**). The use of the term "forfeited" is telling; it implies that Williams' right to these wages is accrued through his prior work and that such wages are subject to loss only upon a finding of misconduct or failure to meet certain standards—a concept that is consistent with wages already earned, rather than compensation for services yet to be performed.

The logical extension of this reasoning is that the Salary and Non-Discretionary Bonus at issue are not speculative or contingent upon future services or employment. Instead, they represent compensation for services that have already been performed and valued by applya. As such, these

wages cannot be classified as "future wages." They are, by their very nature, payment for past services, earned and accrued through Williams' prior satisfactory performance. Any attempt to categorize these wages as "future wages" is flawed. To do so would disregard the clear and express terms of the Employment Agreement, which ties the wages directly to past employment performance, conditioned only by the absence of "Cause" in the termination. *See S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC*, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008) ("Where an agreement is clear and capable of legal construction, the court's only function is to interpret its lawful meaning and the intention of the parties as found within the agreement and give effect to it.") (internal citation omitted).

The legislature did not intend for the Act to obstruct an employee's ability to contract for wages already earned. The Act is not designed to override the parties' intentions as expressed within the four corners of the employment agreement. Instead, it is intended to safeguard the employee's bargained-for compensation. The Act "requires only a written agreement as to wages and compliance with that agreement." *Sezov v. Intown Suites Mgmt., Inc.*, 2005 U.S. Dist. LEXIS 35157, at *8 n.4 (D.S.C. Dec. 12, 2005). By adhering to this principle, the Act ensures that the freedom to contract is respected while also providing protection against any unjust withholding of earned compensation. Consequently, his Salary and Non-Discretionary Bonus must be recognized as compensation for labor rendered during Williams' employment, consistent with the clear terms of the agreement and the foundational legal principles governing employment contracts.

c. The Timing of Williams' Compensation Upon Termination Does Not Impact Whether the Payments Constitute Wages

The circuit court mistakenly relied on the contractual language that "the Company shall upon termination be required to continue to pay to Employee his salary … for two years thereafter" as the basis for its determination that Williams' compensation upon termination was "future

wages." (**R. pp. 10-11**). This is incorrect. The relevant timeframe for analyzing wages under the Act is when services are rendered; the timing of the wage payment is irrelevant to this determination.

The Act "defines 'wages' as 'all amounts … which are due to an employee under any … employment contract.'" *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 195 n.4, 463 S.E.2d 641, 645 n.4 (Ct. App. 1995) (quoting S.C. Code Ann. § 41-10-10(2)). "The 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." *Mc*, 389 S.C. at 318, 698 S.E.2d at 783. Therefore, the Act focuses on when the labor was rendered, not the timing of payment. Thus, the analysis hinges on the moment the payments became due, rather than the contractual period allotted for their disbursement.

Here, the circuit court erred when it relied upon the contractual language requiring applya to "continue to pay" Williams' compensation upon termination for two years into the future. Pursuant to the Employment Agreement, Williams' Salary and Non-Discretionary Bonus became due the moment he was terminated without Cause. (**R. p. 32, Section 6.4(a)**). As discussed in subsection b, *supra*, Williams' Salary and Non-Discretionary Bonus represent contracted-for compensation based solely on the services Williams previously rendered to applya during his employment.

Respondents argue that the future payments described in the "continue-to-pay" language and the provision for payments over the subsequent two years suggest that Williams' compensation upon termination should be classified as future wages. (**R. p. 73, lines 9–11**) ("[T]he continue-to-pay language, as well as the two years thereafter, shows that it's payment to be ongoing. He's not working any further."). However, the mere fact that payments are scheduled to occur in the future does not inherently make them future wages. Future payments can, and frequently do, compensate

for past labor. For instance, commission payments, which are explicitly classified as wages under the Act, are often disbursed after the services have been completed and the associated sales finalized. These payments, though made at a later date, are fundamentally compensation for services already performed. Similarly, the timing of the payment does not change the fact that the compensation in question is earned for services rendered during employment. Therefore, the key consideration should be the timing of the services rather than the timing of payment.

Williams' compensation upon termination is not contingent on any future actions or services but is instead based on his prior satisfactory performance during employment. As Respondents correctly noted, Williams is no longer working for applya, and there are no further actions he can take to earn these wages, which were earned based on the labor he has already performed. *See Provident Bank of Maryland v. McCarthy*, 383 F. Supp. 2d 858, 861 (D. Md. 2005) ("An employee's right to compensation vests when the employee does everything required to earn the wages."). Thus, Williams' compensation upon termination is for services rendered in the past, reinforcing that these payments are indeed wages for past services, regardless of the payment schedule.

CONCLUSION

Based on the foregoing, Appellant Williams respectfully requests that this Court reverse the Order Granting Respondents' Motion for Partial Summary Judgment and find that Williams' Salary and Non-Discretionary Bonus constitute "wages" under the South Carolina Payment of Wages Act.

(Signature page to follow)

Respectfully Submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

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

Chris Williams, ...Appellant,

v.

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

CERTIFICATE OF COUNSEL

This Final Brief on behalf of the Appellant complies with Rule 211(b), SCACR.

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