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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, and
Tom Baumgarten, ... Respondents.

FINAL REPLY BRIEF OF APPELLANT

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Appellant Chris Williams ("**Williams**") respectfully submits this Reply to Respondents applya Occupational Strategies, LLC, Felix Mirando, and Tom Baumgarten's (collectively, the "**Respondents**") Initial Brief (the "**Response**").

INTRODUCTION

The central issues in this appeal are (1) whether Williams' salary (the "**Salary**") and non-discretionary bonus (the "**Non-Discretionary Bonus**") owed upon termination pursuant to Williams' employment agreement (the "**Employment Agreement**") are "wages" as defined under South Carolina's Payment of Wages Act, S.C. Code Ann. §§ 41-10-10, *et. seq.* (the "**Act**") and (2) whether the circuit court correctly applied the standard of review for a Motion for Summary Judgment.

As Respondents' concede in their Response, the plain language of Williams' Employment Agreement read in conjunction with the Act governs whether Williams' Salary and Non-Discretionary Bonus are "wages" under the Act. However, in their continued efforts to avoid the consequences of withholding Williams' wages due under the Employment Agreement, Respondents attempt to re-define Williams' Salary and Non-Discretionary Bonus as "contractual compensation or remedies for his potential future loss of earnings during a period of unemployment," rather than "wages" under the Act. (**Response, p. 12**). Respondents' post-hoc justification falls flat; that is simply not what the Employment Agreement says.

Ultimately, the circuit court erred in determining that Williams' Salary and Non-Discretionary Bonus are not "wages" under the Act. Under *Mathis*, the test for determining whether payments are wages due under the Act is whether the payments are **owed or owing as a debt for labor rendered**. As explained in Williams' Initial Brief and again in this Reply, Williams' Salary and Non-Discretionary Bonus meet the *Mathis* test in both respects and are therefore "wages" under the Act. However, to the extent the circuit court had doubts about

whether the Act should apply to the payments Respondents owe Williams in this case, the circuit court erred in granting summary judgment because South Carolina law requires that the statute's application be "absolutely clear" for the court to decide the issue at summary judgment.

ARGUMENT

I. Respondents Misinterpret *Mathis* and Contradict Provisions of South Carolina's Payment of Wages Act

Respondents argue that *Mathis v. Brown & Brown of South Carolina, Inc.*, 389 S.C. 299, 698 S.E.2d 773 (2010) supports the position that Williams' Salary and Non-Discretionary Bonus upon termination were not "wages" under the Act because neither his Salary nor Non-Discretionary Bonus were "due" upon Williams' termination. (**Response, p. 11**). Respondents' interpretation and application of *Mathis* is incorrect.

In *Mathis*, the Supreme Court determined that the "[t]he word 'due' means 'owed or owing as a debt' and, as wages are defined by the Act as amounts paid for labor rendered, no wages can be due for future services." *Id.*, 389 S.C. at 318, 698 S.E.2d at 783. Importantly, the Supreme Court does not focus its analysis of whether a wage is "due" on *when* the wages are payable. Rather, the focus of the analysis must be whether the wages are *owed or owing as a debt* for labor rendered and are therefore "due" under the Act. *Id.*

Respondents contend "[a]s of the date of termination, nothing was 'due' to Appellant" because even if his termination were not for cause, his next payment would not have been issued until applya's next payroll. (**Response, p. 11**). Respondents argue "[t]hese amounts cannot be 'wages' under the Act because they were not due as of the date the claim allegedly arose." (*Id.*) (emphasis added). Respondents misapprehend the Supreme Court's definition of "due" in *Mathis*. Respondents assume that "due" is synonymous with **immediately payable**,

but the definition the Supreme Court adopted is "**owed or owing as a debt**," without regard to *when* the debt may be payable. As of the date of termination, applya **owed** two years of Salary and Non-Discretionary as a **debt** to Williams in exchange for his labor previously rendered under the Agreement and triggered by his termination without cause. The fact that the debt was not immediately *payable* upon termination was simply a term the parties negotiated in the Agreement—that does not mean applya's debt for Williams' labor rendered was not *owed*.

Under the language of the Act and the definition of "due" under *Mathis*, Williams' Salary and Non-Discretionary Bonus are wages under the Act because they were owed or owing as a debt for labor rendered under the Employment Agreement. Therefore, the circuit court erred in finding the Salary and Non-Discretionary Bonus are not "wages" subject to the Act, and this Court should reverse the circuit court's order granting partial summary judgment.

II. The Plain Language of the Employment Agreement Declares Williams' Salary and Non-Discretionary Bonus Upon Termination as Wages Under the Act

Respondents argue, and Williams agrees, that this Court should review the unambiguous terms of the Employment Agreement and construe the Employment Agreement according to its "plain, ordinary, and popular meaning." (*See* **Response, p. 10**). Respondents' issue arises, however, with the result of this plain reading: Williams' Salary and Non-Discretionary Bonus are "wages" under the Act. Respondents incorrectly insist that finding Williams' Salary and Non-Discretionary Bonus as "wages" under the Act would be incorrect under the terms of the Employment Agreement for three reasons: (a) the Employment Agreement's introductory headings do not identify Williams' Salary and Non-Discretionary Bonus as "wages;" (b) construing the Salary and Non-Discretionary Bonus as "wages" would result in double pay not contemplated by the Employment Agreement; and (c) construing the Salary and Non-Discretionary Bonus as wages would mean that one day of service could be

worth a half a million dollars. (*See* **Response, pp. 10–13**). As addressed below, each of these arguments fall flat.

a. The Employment Agreement's introductory headings do not prohibit a finding that Williams' Salary and Non-Discretionary Bonus owed upon termination are "wages" under the Act

Respondents contend that because the Employment Agreement contains "introductory words or phrases" defining Williams' Salary and Non-Discretionary Bonus in one Section and discussing his termination in another Section of the Employment Agreement, then Williams' Salary and Non-Discretionary Bonus owed upon termination cannot be considered "wages" under the Act. In particular, Respondents argue that Sections 3.1 to 3.3 of the Employment Agreement address Williams' compensation (i.e., wages) whereas Section 6.4 of the Employment Agreement addresses Williams' termination (the "**Termination Provision**"). Accordingly, Respondents' contend that because one section addresses "wages" and the other section addresses termination, the Termination Provision cannot be the basis in finding that Williams' Salary and Non-Discretionary Bonus upon termination are "wages." This argument is preposterous.

Section 9.2 of the Employment Agreement specifically states: "Descriptive headings are for **convenience only** and **shall not control or affect** the meaning or construction of any provision of this Agreement." (**R. pp. 28-43**) (emphasis added). Accordingly, by its plain, ordinary language, the Employment Agreement nullifies Respondents' argument entirely. Further, Section 6.4 of the Employment Agreement specifically references Section 3.2. (**R. pp. 28-43**) ("the Company shall upon termination be required to continue to pay to Employee his salary[1], bonus pursuant to Section 3.2(a) hereof and all other benefits and perquisites hereunder

[1] "Salary" is defined in Section 3.1 of the Employment Agreement.

. . . ."). Assuming *arguendo* that Respondents' were correct in that different Sections had different meanings, that is irrelevant as the Termination Provision specifically references the wages provisions set forth and defined in Section 3. Accordingly, Respondents' argument that Williams' Salary and Non-Discretionary Bonus are not "wages" under the Act because the Employment Agreement's introductory headings may suggest otherwise is without merit.

b. Respondents' double pay argument is illogical as Williams is only owed his Salary and Non-Discretionary Bonus upon termination

Respondents confuse the interrelationship between "services previously rendered" and an entitlement to his Salary and Non-Discretionary Bonus "upon termination." In their Response, Respondents argue that if Williams' Salary and Non-Discretionary Bonus owed upon termination were for "services previously rendered," and thus "wages" under the Act, then Williams was "actually earning $500,000.00 per year for his first two years of employment for services rendered, even though the contract expressly states his salary is $250,000.00 per year." (**Response, p. 12**). This, of course, is not a correct reading of the Employment Agreement, nor an argument posited by Williams.

Williams is **only** entitled to his Salary and Non-Discretionary Bonus "upon termination." (**R. pp. 28-43**). Williams does not concurrently receive this Salary and Non-Discretionary Bonus during his employment if he is not terminated (i.e., a triggering event). Further, just because Williams does not concurrently receive the Salary and Non-Discretionary Bonus during his employment does not mean that the Salary and Non-Discretionary Bonus are not for services previously rendered and, thus, not "wages" under the Act. Rather, the parties agreed that as a condition of performing services for applya, Williams was owed his Salary and Non-Discretionary Bonus "upon termination."

This analysis is akin to an employee's entitlement to paid vacation or holiday leave, which are explicitly deemed "wages" under the Act. *See* S.C. Code Ann. § 41-10-10(2) ("'Wages' means all amounts at which labor rendered is recompensed . . . and **includes vacation, holiday, and sick leave payments** which are due to an employee under any employer policy or employment contract.") (emphasis added). For example, many employees, like Williams, are entitled to paid vacation or holiday leave from their employer. While employed, however, the employee does not "double dip" and receive two sets of wages by way of entitlement to vacation pay; rather, the employee only receives the benefit of paid vacation or holiday leave when the employee takes a vacation or holiday leave. Accordingly, not until the employee takes a paid vacation or holiday leave does this benefit materialize and become "owed" thereby requiring the employer to remit payment for these wages.

Similarly, as discussed in Section I, *supra*, Williams' entitlement to his Salary and Non-Discretionary Bonus do not become owed unless and until he is terminated. Once he is terminated, Williams' entitlement to his Salary and Non-Discretionary Bonus for the services he previously rendered is triggered. Thus, like paid vacation and holiday leave, Williams' Salary and Non-Discretionary Bonus are "wages" under the Act and Respondents' "double pay" argument is tenuous at best.

c. The Court cannot re-write the Employment Agreement to correct the wisdom or folly of the Parties' negotiated terms

"When 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." *S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 655, 667, S.E.2d 7, 13 (Ct. App. 2008) (emphasis added) (citing *Ebert v. Ebert*, 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct. App. 1995)). Thus, "[a] Court's ultimate duty is

confined to interpreting the contractual provisions agreed to by the parties – **regardless of their wisdom or folly, apparent unreasonableness, or any failure of the parties to guard their interests carefully**." *Maybank v. BB&T Corp.*, 416 S.C. 541, 574, 787 S.E.2d 498, 515 (2016) (emphasis added) (citing *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E.2d 327, 330 (1999)). The Court is "without authority to alter an unambiguous contract by construction or to make new contracts for the parties." *S.C. Dep't of Transp.*, 379 S.C. at 655, 667 S.E.2d at 13 (citing *C.A.N. Enters., Inc. v. South Carolina Health and Human Servs. Fin. Comm'n*, 296 S.C. 373, 378, 373 S.E2d 584, 587 (1988)).

Respondents posit that Williams' Salary and Non-Discretionary Bonus owed upon termination cannot be "wages" under the Act because "[b]y its **plain language**, if [Williams] had worked only one full day for applya, been terminated without cause the next day, he would still be owed two years' salary post-termination pursuant to the Employment Agreement." (*See* **Response, p. 12**) (emphasis added). Frankly, Williams agrees that the **plain language** of the Employment Agreement requires that Respondents remit payment of his Salary and Non-Discretionary Bonus upon termination without cause. The problem, however, is that Respondents now disagree with the result of what the Parties agreed to in the Employment Agreement. In an effort to reform the terms of the Employment Agreement, Respondents attempt to characterize the Salary and Non-Discretionary Bonus as "contractual compensation or remedies for his potential future loss of earnings during a period of unemployment." (**Response, p. 12**). Respondents miss the point that, even if the *intent* of including the Salary and Non-Discretionary Bonus in the Employment Agreement was to compensate Williams for future lost earnings, that compensation was **earned** (and is therefore **owed and owing as a**

debt) for labor rendered prior to Williams' termination. That is what the contract unambiguously says.

Fundamentally, the Parties were free to contract however they so desire. *See S.C. Dep't of Transp.*, 379 S.C. at 657, 667 S.E.2d at 13–14 ("The courts must construe and enforce contracts as written, in order to preserve the fundamental right of freedom of contract."). The Parties agreed, as part of their negotiations in entering into the Employment Agreement[2], that Williams was entitled to his Salary and Non-Discretionary Bonus for two years **upon termination**. In determining whether Williams' Salary and Non-Discretionary Bonus are "wages" under the Act, the Court need look no further than the specific language of Section 6.4(a) of the Employment Agreement:

> 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 termination** be required to continue to pay to Employee his **salary**[3], **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.

(**R. pp. 28-43**) (emphasis added). As the Respondents concede in their Response, Williams' "compensation is dealt with in Section 3 of the Employment Agreement, with the topical introduction 'Salary and Bonus' and subsections Section 3.1 labeled 'Salary', Section 3.2 labeled "Bonus', and Section 3.3 labeled 'Stock Options.'" (**Response, p. 10**). Importantly, as noted above, the Parties opted to use the exact same words (i.e., "salary" and "bonus") in the Termination Provision as they are used in Section 3 in defining Williams' wages. (**R. p. 32**)

[2] Section 9.11, Employment Agreement. Advice of Counsel. The Employee represents and warrant that he has had full opportunity to seek advice and representation by independent counsel of his or her own choosing in connection with the interpretation, negotiation, and execution of this Agreement.
[3] "Salary" is also defined in Section 3.1 of the Employment Agreement.

(". . . the Company shall upon termination be required to continue to pay [Williams] his **salary, bonus pursuant to Section 3.2(a)**. . .").

The Parties could have used separate terms in the Termination Provision, provided different avenues of relief for Williams upon termination, or not included a Termination Provision altogether; however, the Parties chose not to. Instead, as a result of negotiations, the Parties specifically chose to use the exact same words that defined Williams' wages in Section 3 in providing Williams' Salary and Non-Discretionary Bonus upon termination in Section 6.4 of the Employment Agreement. Based on the clear, unambiguous language of the Employment Agreement, this Court cannot alter an unambiguous provision to rectify Respondents' failure to safeguard their own interest, but rather must enforce the terms of the Employment Agreement and find that Williams' Salary and Non-Discretionary Bonus are "wages" under the Act.

III. Respondents Misapprehend and Misapply the Standard for Granting Summary Judgment

Williams argues in his Initial Brief that the circuit court's grant of partial summary judgment was improper because (a) the circuit court stated that application of the Act to the facts in this case was questionable, and (b) the circuit court raised a question of legislative intent and then failed to engage in the required analysis to determine the General Assembly's intent. (**App. Initial Brief, pp. 13–16**). In response, Respondents argue that the circuit court's grant of summary judgment was proper and should be upheld for three reasons:

1) Summary judgment is appropriate for pure questions of law, such as construction of statutory and contractual provisions;
2) Williams failed to explain how curing the circuit court's alleged procedural errors would have changed the result; and

3) The General Assembly intended to protect laborer's wages for services rendered, not to protect post-termination compensation for highly paid executives, and therefore the circuit court's determination that Williams' Salary and Non-Discretionary Bonus were not wages is what the General Assembly intended.

(**Response, pp. 14–17**). Respondents ignore relevant South Carolina case-law about when summary judgment is and is not appropriate, and attempt to require Williams to show he would ultimately win on the merits to overcome a procedurally improper grant of summary judgment. For these reasons, Respondents arguments fail.

a. Summary judgment is not appropriate when the application of the law to the facts or the conclusions to be drawn from the facts are unclear

Respondents are correct that, generally, construction of a statute and a contract are legal questions appropriately disposed of at summary judgment. (**Response, p. 15**). However, Respondents completely ignore the exceptions to that general rule. Longstanding South Carolina case-law is clear that, even if there is no dispute as to evidentiary facts, "[s]ummary judgment **should not be granted** . . . if there is dispute as to the conclusion to be drawn from those facts." *Tupper v. Dorchester Cty.*, 326 S.C. 318, 326, 487 S.E.2d 187, 191 (1997) (emphasis added) (citing *Gilliland v. Elmwood Prop.*, 301 S.C. 295, 391 S.E.2d 577 (1990)) (quoting *Piedmont Engineers, Architects and Planners, Inc. v. First Hartford Realty Corp.*, 278 S.C. 195, 293 S.E.2d 706 (1982)). Moreover, when deciding whether to grant summary judgment regarding the application of a statute to particular facts, "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." *Shea v. Dep't of Mental Retardation*, 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).

In this case, the circuit court's order granting partial summary judgment ("**Formal Order**") states that the language to the Act "may be subject to another interpretation," and that "it is questionable as to whether the General Assembly intended for the Act to apply to the facts in this case." (**R. p. 11**). Respondents argue that the circuit court was simply "expressing doubt about Williams' argument," not the General Assembly's intent or the application of the Act to the facts in this case. (**Response, p. 14**). But that is not what the Formal Order says. The circuit court could have easily said that it did not find Williams' arguments credible or compelling. Instead, the circuit court said that the General Assembly's intent for the Act to apply to the facts in this case is questionable and the statute may be subject to another interpretation. Just as Respondents cannot re-write the terms of the Employment Agreement, Respondents cannot re-write the circuit court's Formal Order.

Based on the circuit court's own statements, granting summary judgment at this stage of the litigation was inappropriate under South Carolina law, as the application of the Act to the facts and the conclusions to be drawn from the facts were in dispute and not absolutely clear as a matter of law.

b. Respondents attempt to misdirect the Court from the proper summary judgment standard

Williams argues that the circuit court granting summary judgment at this stage of the litigation was improper, as evidenced by the circuit court's statements in the order. Rather than adequately addressing the substance of Williams' argument, Respondents attempt to misdirect the Court's attention by complaining that Williams did not explain how further development of the facts would clarify the application of the Act in this case, nor how the court misinterpreted the Act. (**Response, pp. 14–15**).

As an initial matter, Respondents ignore the direction under *Shea* that a court should not grant summary judgment if "the statute's application is not ***absolutely clear*** as a matter of law." 279 S.C. at 611, 310 S.E.2d at 822 (emphasis added). Here, the application of the Act to the facts of this case are not "absolutely clear" as evidenced by the circuit court's statements that the language of the Act may be subject to another interpretation and the intended application of the Act to the facts in this case is "questionable." (**R. p. 11**). Even if Respondents believe they will ultimately prevail upon a trial on the merits (Williams disagrees), they cannot reasonably argue that the application of the Act in this case is "absolutely clear." As such, summary judgment is improper and Williams' claim should be allowed to proceed.

Regardless, Respondent argues that because Williams failed to explain ***how*** further inquiry into the facts would clarify the application of the Act to the facts in this case, this Court should uphold the circuit court's ruling. (**Response, pp. 14–15**). But that is not what is required. The case-law states that summary judgment is not proper where "inquiry into the facts is ***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). Whether further inquiry into the facts will successfully clarify application of the Act to the facts is not the standard to survive summary judgment. Rather, because the circuit court found that application of the Act to the facts here is not ***absolutely clear***, it is ***desirable*** that Williams have the opportunity to provide the circuit court with additional context and/or facts at trial to elucidate the appropriate application of the Act before the circuit court issues a final ruling. Notably, even if further inquiry into the facts would not clarify the application of the Act to the facts in this case, summary judgment is also not proper when "there is dispute as to the ***conclusion*** to be drawn from [the undisputed

evidentiary] facts." *Tupper*, 326 S.C. at 326, 487 S.E.2d at 191. Either way you cut it, summary judgment was not appropriate based on the circuit court's statements in the Formal Order.

Respondent also argues that "Appellant fails to explain how the circuit court misinterpreted the Act or what 'other interpretation' advanced by the Appellant would have led to a different result." (**Response, p. 15**). This is plainly incorrect. Williams argued in the first section of his Initial Brief that the circuit court committed an error by raising a question about the General Assembly's intent and then failing to apply the required rules of statutory construction to ascertain the intent in question. (**App. Initial Brief, pp. 15–16**). Then, the entire second section of Williams' Initial Brief is dedicated to arguing ***how*** the circuit court erred in interpreting the Act not to apply to the facts in this case. (**App. Initial Brief, pp. 16–25**).

Respondents' arguments that Williams did not sufficiently address the procedural errors in the circuit court's Formal Order do not withstand scrutiny, and the Court should disregard them.

c. The circuit court did not apply the required rules of statutory construction

Williams argues that the circuit court raised a question as to the General Assembly's intent and then did not engage in the required analysis to ascertain that intent. Respondents argue in response that "Appellant cites two rules of statutory interpretation without explaining what bearing those rules have on the circuit court's decision," and then go on to perform their own cursory analysis of the General Assembly's intent. (**Response, pp. 15–17**). Respondents completely miss the point in both regards.

i. <u>The Court was required, but failed, to apply the rules of statutory interpretation</u>

"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). Those rules include applying a reasonable interpretation consistent with the purpose and policy of the lawmakers, and reading the provisions in a statute as a whole rather than in isolation to ascertain lawmakers' intent. *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992); *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 232, 612 S.E.2d 719, 724 (Ct. App. 2005).

The crux of Williams' argument is that the circuit court erred by raising a question of statutory intent—"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"—and then failing to apply the rules of statutory interpretation. (**R. p. 11**). Because the intended meaning and application of the Act in this particular scenario is not clear and definite (by the circuit court's own admission), the circuit court was ***required*** to apply the rules of statutory interpretation. But the Formal Order includes no analysis under the rules of statutory interpretation about the "real purpose and intent of the lawmakers," instead simply jumping to what "the Court believes" is the purpose of the Act with no citation to any precedent or evidence of lawmakers' intent. Absent application of the rules of statutory interpretation, it was error for the circuit court to solely rely on its own, unsupported "belief" about the intended purpose of the Act. This is the

"bearing" the rules of statutory interpretation have on the circuit court's Formal Order granting summary judgment, just as Williams explained in his Initial Brief.

ii. Respondents do not (and cannot) demonstrate that the General Assembly intended the Salary and Non-Discretionary Bonus to be outside the ambit of the Act

Rather than addressing the circuit court's procedural error, Respondents engage in their own analysis of the General Assembly's intended meaning and application of the Act in this particular circumstance. (**Response, pp. 15–17**). But Respondents simply regurgitate the general purpose of the Act, which is to ensure that laborers are compensated the wages they are due for labor rendered (which Williams does not dispute), and then leap to how that purpose means that Williams' Salary and Non-Discretionary Bonus cannot possibly be wages because Williams was a highly paid executive who is not the intended beneficiary of the Act. Respondents cite no legal support for their position that the Act is not intended to protect the wages of highly paid executives, except for one case which they completely misrepresent.

Respondents state that *Rice v. Multimedia, Inc.* stands for the proposition that "employer policies related to commission payments to a high ranking sales executive are not a violation of public policy or subject to the Act." (**Response, p. 16**). That case is completely irrelevant here, as there are no commissions under dispute in this case. Even so, Respondents' characterization of *Rice* is completely incorrect. The South Carolina Supreme Court found in *Rice* that an employer's written policy that commissions are not "earned" until both a sale of an advertisement is made and the advertisement is aired prior to the salesperson's departure from the company is not void as against public policy by creating a condition on when the wages are "due." *Rice v. Multimedia, Inc.*, 318 S.C. 95, 100, 456 S.E.2d 381, 384 (1995). The Supreme Court did **NOT** find that that such employer policies are not subject to the Act; it simply found that employers and employees can agree to contractual terms that determine

when wages become "due," just as they did in this case by making the Salary and Non-Discretionary due upon termination. *Rice* certainly **does not** support Respondents' argument that the Act is not meant to protect wages due to highly paid executives, as demonstrated by the Court upholding the jury's determination that a portion of the so-called highly paid executive's disputed commissions were wages subject to recovery under the Act. *Id.* at 102, 456 S.E.2d at 385. Respondents cite to no other cases or evidence for their proposition that the Act is not meant to protect the wages of highly paid executives. That is clearly what Respondents want the Act to mean, but that does not make it so.

Ultimately, even if it were proper for Respondents to substitute their analysis of statutory intent for the circuit court's failure to do so, Respondents' attempt to ascertain the General Assembly's intended application of the Act to the facts in this case fall extremely short. Respondents cannot demonstrate that the General Assembly intended to exclude business executives from the ambit of the Act because no such intent exists.

CONCLUSION

Williams' Salary and Non-Discretionary Bonus are owed and owing as a debt to Williams for his labor rendered under the Employment Agreement, and as such are "wages" under the Act and the Supreme Court's ruling in *Mathis*. To the extent the circuit court had any doubt as to whether the Act applies to the facts in this case (which it clearly expressed in the Formal Order), the circuit court should have denied Respondents' motion for partial summary judgment and allowed Williams' claim to proceed to trial. Accordingly, Williams respectfully requests that this Court reverse the Formal Order granting partial summary judgment and find that Williams' Salary and Non-Discretionary Bonus constitute "wages" under the Act.

Respectfully Submitted,

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CERTIFICATE OF COUNSEL

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

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