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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Circuit Court for the Thirteenth Judicial Circuit

Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2026-000941

Brow Art Management, LLC, Appellant,

vs.

Angel Eyez & Brows, LLC, Manpreet Kaur, and Binal Gandhi, Respondents.

INITIAL BRIEF OF RESPONDENTS

W. Andrew Arnold, Esq.
SC Bar # 65311
Law Office Of W. Andew Arnold, P.C.
245 E. Broad St., Suite A
Greenville, SC 29601
Office: (864) 242-4800
aarnold@aalawfirm.com

Attorney for Respondents

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STATEMENT OF THE CASE

The Appellant filed its Summons and Complaint on June 6, 2025 alleging three causes of action and attaching two Non-Competition Agreements to the filed Complaint. (Summons and Complaint dated June 6, 2026; (R.__P.__). After being served with the Summons and Complaint on June 18, 2025, Defendants filed their "Motion to Dismiss or in the Alternative Motion for Summary Judgment" on July 11, 2025. Defendants attached two sworn affidavits of Respondents Binal Gandhi and Manpreet Kaur attesting that the Non-Competition Agreements were signed after inception of employment and without any additional consideration. (Motion to Dismiss dated July 11, 2025; R. p. ___; Affidavit of Binal Gandhi dated July 11, 2025; R. p. ___;Affidavit of Manpreet Kaur dated July 11, 2025; R. p. ___.)

Appellant responded by submitting the affidavit of its own Chief Executive Officer, Vinesh Darji, in response to Defendants' Motion to Dismiss or in the alternative Motion for Summary Judgment. (Affidavit of Vinesh Darji dated August 4, 2025; R. p. ___). Both parties made repeated references to facts contained in the affidavits during the Circuit Court hearing on December 11, 2025. The Circuit Court considered the arguments and submission of both the parties. (Order Granting Motion to Dismiss dated March 18, 2026; R. p. ___). There were no objections by either party to any of the submissions or arguments made by counsel.

STANDARD OF REVIEW

Appellant appeals the trial court's order granting Respondents' "Motion to Dismiss or in the Alternative Motion for Summary Judgment" filed pursuant to South Carolina Rules of Civil Procedure 12(b)(6) and 56. (Order Granting Motion to Dismiss dated March 18, 2026; R__.___). An order granting a motion to dismiss under SCRCP 12(b)(6) is reviewed de novo. The appellate court applies the same standard as the Circuit Court, construing the complaint in the light most

favorable to the nonmoving party and determining whether the facts alleged and the reasonable inferences from those facts would entitle the plaintiff to relief under any theory. *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009).

However, the parties did not limit its submissions to the Circuit Court to the pleadings. Appellant attached two Non-Competition Agreements to the Complaint (which contained no factual allegations regarding consideration or the dates of employment), which showed the dates of execution of the Non-Competition Agreements. Respondents submitted their respective affidavits to provide additional (and undisputed) facts concerning dates of employment. Appellant submitted an affidavit in response, which confirmed these additional facts. The Circuit Court considered those affidavits without objection. (R. pp. –). Appellant made no objections and relied on the affidavit submitted during oral argument.[1] (Tr. at 14; R. p. ___).

SCRCP12(b) provides that when matters outside the pleadings are presented and not excluded, "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." *Johnson v. Dailey*, 318 S.C. 318, 320, 457 S.E.2d 613, 614 (1995). Thus, the summary judgment standard of review is therefore the more applicable standard of review. Summary judgment is reviewed de novo and is proper when the evidence shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023). The evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party. *Id.* at 462. Although a mere scintilla of evidence is insufficient, the nonmoving party defeats summary judgment by producing specific facts showing a genuine issue for trial. *Id.* at 463–64.

[1]"A contemporaneous objection is required to properly preserve an error for appellate review. The failure to make an objection at the time evidence is offered constitutes a waiver of the right to object." *Doe v. S.B.M.*, 327 S.C. 352, 356–57, 488 S.E.2d 878, 880 (Ct. App. 1997).

Accordingly, although the order is styled as one granting a motion to dismiss, it should be reviewed under Rule 56 because the Circuit Court considered matters outside the pleadings that were submitted by both parties and not excluded. Under that standard, the question is whether the pleadings, affidavits, and other permissible Rule 56 materials, viewed in the light most favorable to Appellant, disclose any genuine issue of material fact or establish that Respondent was entitled to judgment as a matter of law. However, under either standard of review, this Court should affirm.

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY HELD THE NONCOMPETE AGREEMENTS UNENFORCEABLE FOR LACK OF CONSIDERATION.

A. South Carolina law requires new, independent consideration for a covenant not to compete signed after employment has begun.

Under South Carolina laws, noncompete covenants are "generally disfavored and will be strictly construed against the employer, and will be enforced only if, among other requirements, they are supported by valuable consideration." *Rental Uniform Serv. of Florence, Inc. v. Dudley*, 278 S.C. 674, 675-76, 301 S.E.2d 142, 143 (1983); *Faces Boutique, Ltd. v. Gibbs*, 318 S.C. 39, 42, 455 S.E.2d 707, 709 (Ct. App. 1995). Moreover, "the necessary elements of a contract are an offer, acceptance, and valuable consideration." *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). The test formalized in *Rental Uniform Serv. of Florence, Inc. v. Dudley*, 278 S.C. 674, 675–76, 301 S.E.2d 142, 143 (1983) provides that a covenant not to compete is enforceable only if:

> (1) the restriction is necessary for the protection of the legitimate interest of the employer;
>
> (2) the restriction is reasonably limited in its operation with respect to time and place;
>
> (3) the restriction is not unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a livelihood;

(4) the restriction is reasonable from the standpoint of sound public policy; and

(5) the restriction is supported by a valuable consideration.

The Complaint was totally devoid of any allegation concerning any of the above elements of enforceability, including being silent on the issue of consideration. The Agreements state only it is for the "mutual promises and undertakings set forth therein," but the contract is absent of promises and undertakings by Respondents. (Affidavit of Vinesh Darji ¶¶ 5-9; R. p. ___) The affidavit of V. Darji corroborates that Respondent Gandhi and Kaur had been employed for years before signing the Agreements. [(Affidavit of Vinesh Darji ¶¶ 5-9; R. p. ___)The affidavit fails to identify any valuable consideration given to either Respondents Gandhi or Kaur.

On the consideration requirement, the law could not be more settled. *In Poole v. Incentives Unlimited, Inc*., 345 S.C. 378, 548 S.E.2d 207 (S.C. 2001), the South Carolina Supreme Court stated the definitive rule on consideration for mid-employment noncompete agreements. In *Poole*, the employee had worked as a travel agent for Incentives Unlimited beginning in 1992. Four years into her at-will employment, Incentives asked the employee to sign a noncompete covenant, with no accompanying raise, promotion, bonus, or change in duties. The Supreme Court affirmed the Court of Appeals, adopting the rule that "when a covenant is entered into after the inception of employment, separate consideration, in addition to continued at-will employment, is necessary in order for the covenant to be enforceable." *Id. at* 382, 548 S.E.2d 207, 209 (2001). The Court rejected the employer's argument that continued at-will employment alone sufficed.

B. The undisputed facts establish that no new consideration was given.

Every fact necessary to apply *Poole* is in the record, sworn, and uncontradicted. Respondent Kaur was hired by Appellant on August 9, 2017; Respondent Gandhi was hired on October 25, 2022. (Affidavit of Manpreet Kaur ¶ 3; R. p. ___) (Affidavit of Binal Gandhi ¶ 3; R. p. ___). In July 2023 — nearly six years into Ms. Kaur's employment and more than eight months

into Ms. Gandhi's — Appellant demanded that each sign the noncompete agreement on which this suit is founded. (Kaur Aff. ¶ 4; Gandhi Aff. ¶ 4; R. p. ___). Neither was offered or provided "any raise, bonus, promotion, equity interest, change in status, or other new consideration in exchange for signing"; their "wages, duties, schedule and benefits remained the same." (Kaur Aff. ¶ 5; Gandhi Aff. ¶ 5; R. p. ___).

Appellant's own evidence corroborates every one of those facts. Its CEO's affidavit confirms the hire dates and the 2023 signing dates, states that upon his appointment "all employees were required to sign updated agreements," and describes the covenant as a standard condition of remaining employed. (Affidavit of Vinesh Darji ¶¶ 5-9; R. p. ___; *see* Appellant's Br. at vi (reciting these facts from the Darji affidavit)). Darji affidavit does not identify any raise, bonus, promotion, or other new benefit given in exchange for the 2023 covenants because there was none.

The agreements themselves complete the picture. Each recites that Brow Art "wishes to hire Employee as an at will employee," and each concludes with the employee's certification — in bold capitals — that "NO PROMISES OR REPRESENTATIONS HAVE BEEN MADE TO SUCH PERSON TO INDUCE THE SIGNING OF THIS AGREEMENT." (Nondisclosure and Non-Competition Agreements, attached to Kaur and Gandhi Affidavits; R. p. ___). A covenant signed mid-employment, as a condition of simply keeping the at-will job the employee already held, with no new benefit of any kind, is precisely the covenant *Poole* holds unenforceable as a matter of law. The circuit court applied settled law to undisputed facts. Nothing more was required.

C. Appellant's counterarguments cannot create a question of fact.

Appellant contends that "[t]he existence of consideration is not a determination that should be made at the pleading stage" and that discovery was needed. Appellant's Br. at viii. That argument fails twice over. First, as shown in Section I, Plaintiff's Complaint failed to plead the

necessary elements of a contract and the important element of consideration. Moreover, this was not a bare pleading-stage ruling: both parties submitted affidavits, and the material facts were undisputed. Second, a party resisting summary judgment on the ground that discovery is incomplete "must demonstrate the likelihood that further discovery will uncover additional relevant evidence" and that it is "not merely engag[ing] in a 'fishing expedition.'" *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003).

Appellant never made and cannot make a showing that additional discovery will uncover additional consideration. No deposition or document request can change when Ms. Kaur and Ms. Gandhi were hired, when they signed, or what they received in exchange; Appellant's own CEO has already sworn to those facts. Discovery does not manufacture consideration that was never given. Read in full, the only "promises" the Agreements extend to the employee are hiring and continued employment on an expressly at-will basis, which is the very consideration *Poole* holds insufficient. The Agreements simultaneously certify that no other promises were made to induce signing. The Circuit Court's order should be affirmed.

II. THE CIRCUIT COURT CORRECTLY HELD THAT ANGEL EYEZ & BROWS, LLC IS NOT A PARTY TO ANY CONTRACT WITH APPELLANT.

Appellant included Respondent Angel Eyez & Brows, LLC as a party to the breach of contract cause of action, although Respondent Angel Eyez is not a party to either Agreement attached to the Complaint. A breach of contract action lies only against a party to the contract. The elements of the claim are the existence of a contract between the parties, its breach, and resulting damages. *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). In *Thomas Trancik, M.D., P.A. v. USAA Ins. Co.,* 354 S.C. 549, 581 S.E.2d 858 (Ct. App. 2003), trial court granted the defendant's motion to dismiss because the defendant was not a party to the alleged contract. The South Carolina Court of Appeals held: "[A]n individual who is not a party to

a contract generally cannot be liable for its breach." *Id.* at 554, 581 S.E.2d 858, 861 *citing Holder v. Haskett*, 283 S.C. 247, 251, 321 S.E.2d 192, 194 (Ct. App. 1984).

The contracts Appellant sued upon are attached to its own Complaint, and their faces answer the question. Each is an agreement "by and between" an individual employee — Ms. Kaur or Ms. Gandhi — "and Brow Art Management, LLC, d/b/a Brow Art 23." (Nondisclosure and Non-Competition Agreements; R. p. ___). Angel Eyez & Brows, LLC is not a signatory, is not named, and is nowhere referenced.

Appellant's reliance on *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 762 S.E.2d 696 (2014), for the proposition that "the existence of a contract and the identity of the parties bound by it are questions of fact," is misplaced. Appellant's Br. at ix. The case does not stand for the proposition for which it was cited but for the opposite proposition. "Although the existence of a contract is ordinarily a question of fact for the jury, where the undisputed facts do not establish a contract, the question becomes one of law." *Id.* at 578, 762 S.E.2 at 701. There's not a single allegation that Angel Eyez is a party to the contract. The contracts are attached and include the parties.

The Circuit Court's order under appeal includes the citation of *Raines v. Walker*, 262 S.C. 330, 204 S.E.2d 802 (1974) to support the proposition that a party to a contract cannot be sued for its breach. This case does not exist. Although Respondent's counsel included a citation from *Trancik* (copied and pasted from a prior motion to dismiss counsel had used for the same argument) in the drafting of Respondents' supporting memorandum, an AI editing process hallucinated a case, which was inserted to support a correct proposition of law. Appellant's counsel proofed the final memo from which the citation and the order came but because counsel recognized the

proposition as true, counsel did not notice that the case intended to be cited had been replaced with another and non-existent case.[2]

And this Court reviews judgments, not citations: under Rule 220(c), SCACR, "[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal," and a correct judgment is not reversed because the authority articulated below was flawed. *See e.g., I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 417-20, 526 S.E.2d 716, 722-23 (2000).* It's the citation that is wrong, but the rule of law the circuit court applied is correct.

III. THE CIRCUIT COURT CORRECTLY DISMISSED THE CIVIL CONSPIRACY CLAIM.

Under *Paradis v. Charleston County School District*, 433 S.C. 562, 574-75, 861 S.E.2d 774 (2021), a civil conspiracy claim requires "(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." Respondents do not dispute Appellant's observation that *Paradis* abolished the former special damages requirement. But *Paradis* relieved plaintiffs of pleading a particular *category* of damages; it did not relieve them of pleading *facts to establish* the four elements of the cause of action.

Measured against those elements, the Complaint offers nothing but conclusions. As the Circuit Court found, its allegations "consist[] largely of conclusory recitations of elements without supporting factual allegations." (Order Granting Motion to Dismiss dated March 18, 2026; R. p.

[2] Respondents' counsel self-reported this infraction to the Office of Disciplinary Counsel (OCD) within two hours of learning of the false citation. Counsel takes full responsibility for failure to completely verify the final draft of the proposed order to the court as well as the final memorandum from which the order was prepared.

___). The Complaint asserts that the individual Respondents "conspired" to harm Appellant's business, but it identifies no agreement between the Respondents, no facts of an unlawful act, and no overt act in furtherance of any agreement. Appellant's own brief describes the claim at the same altitude of abstraction: "The Complaint clearly lists the Respondents as minds that met in combination or agreement to commit an unlawful act that injured the Appellant." Appellant's Br. at x-xi.

The entire course of conduct alleged is that two former at-will employees left, formed a competing eyebrow-threading business, and competed. Absent an enforceable restrictive covenant competition by a former at-will employee is lawful. A conspiracy claim requires an unlawful object or unlawful means, *Paradis*, 433 S.C. at 574, 861 S.E.2d at 780; an agreement between two people to do what the law permits each of them to do is not an actionable conspiracy. Having failed to plead any enforceable obligation the Respondents combined to violate, the Complaint pleads, at most, an agreement to compete.

CONCLUSION

For the reasons set forth herein, this Court should affirm the Circuit Court's order granting judgment to Respondents on all of Appellant's causes of action.

Respectfully Submitted,

s/ W. Andrew Arnold

W. Andrew Arnold, Esq.
SC Bar # 65311
Law Office Of W. Andew Arnold, P.C.
245 E. Broad St., Suite A
Greenville, SC 29601
Office: (864) 242-4800
aarnold@aalawfirm.com

Attorney for Respondents

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