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-Cl. Papers

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-02-01772

Coves Dardon, LLC

Francisco Jose Garcia Ibanez, Dori Derr, and
Half Moon Stables, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE):** Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRADING AND INVESTMENT ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Motion to Reconsider December 5, 2013 Order is DENIED.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

FILED 1-13-2014

SCRPC Form 4C (03/2013)

Page 1

Luis Godard
C.C.C.P. & G.S.
Francisco Garcia Ibanez
Deputy Clerk

RECEIVED
FEB 25 2014
SC Court of Appeals

JAN 13 2014

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Elizabeth Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

Luis Godard
C.C.C.P. & G.S.
Aiken County, S.C.

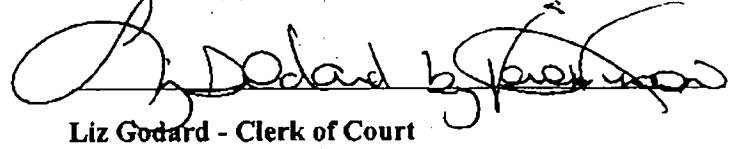
This judgment was entered on January 13, 2014, and a copy mailed first class or placed in the appropriate attorney's box on January 13, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

M. Baron Stanton PO Box 245 Columbia, SC 29202

Thomas Roy Young Jr. PO Box 651 Aiken, SC 29802

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Liz Godard - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
Coves Darden, LLC,)
)
)
Plaintiff,)
)
v.)
)
Francisco Jose Garcia Ibañez,)
)
Dori Derr,)
)
and Half Moon Stables, LLC,)
)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 12-CP-02-01772

ORDER GRANTING
SUMMARY JUDGMENT

This matter came before the Court by way of Defendants' Motion for Summary Judgment. A hearing was held on October 15, 2013. After reviewing the pleadings, submissions including legal memoranda, and hearing the able arguments of counsel, the Court grants Defendants' Motion for Summary Judgment.

PROCEDURAL HISTORY

This case arises out of a lawsuit filed by Plaintiff for the alleged breach of an oral contract of employment. Defendants' Motion for Summary Judgment was originally heard on March 5, 2013. After that hearing, the Court ordered Defendants to produce certain written discovery and allowed Plaintiff the opportunity to depose Defendant Ibanez. Subsequently, the Motion was heard again on May 20, 2013. After that hearing, the Court took the matter under advisement and allowed the Defendants to amend their Answer to allege a statute of frauds defense. On July 9, 2013, this Court notified all counsel that the Court would hold the summary judgment motion in abeyance while allowing the parties ninety (90) more days of discovery.

FILED 12.20 2013
Liz Godard
C.C.P.&O.S.
Anita Knoepfle 2301
Deputy Clerk

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After the conclusion of the additional ninety day discovery period, this Court reheard argument on the summary judgment motion on October 15, 2013.

UNDISPUTED FACTS AND PARTY ADMISSIONS

1. Sometime before September 30, 2011, Plaintiff Covos Darden, LLC ("Coves Darden") submitted an application with the Department of Homeland Security, U.S. Citizenship and Immigration Services seeking issuance of an O-1 visa for Francisco Jose Garcia Ibañez. (Complaint, ¶¶ 6, 11; Admitted in First Amended Answer, ¶¶ 6, 11).

2. The application sought admission of Mr. Garcia to the United States to work as an equestrian trainer.¹ (Complaint, ¶ 7; Admitted in First Amended Answer, ¶ 7).

3. The application was granted, and Mr. Garcia entered the United States on or about February 8, 2012. (Complaint, ¶ 13; Admitted in Answer, ¶ 13).

4. It is undisputed that Mr. Garcia commenced working for Plaintiff Covos Darden shortly thereafter.

5. On or about June 8, 2012, Mr. Garcia quit Covos Darden. (Complaint, ¶¶ 17, 18; Admitted in Answer, ¶¶ 17, 18).

6. Plaintiff has judicially admitted that there was no oral contract of employment between Covos Darden and Defendant Garcia (Plaintiff's response to Interrogatory No. 6):

"The agreement was not oral. It was a written contract presented to and acknowledged by Ibanez in (sic) or before January of 2012, after August of 2011."

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The Complaint and Plaintiff's discovery responses repeatedly refer to the Defendant as Mr. Ibañez. In Spain, the patronymic (father's last name) is followed by the matronymic (mother's last name). In Hispanic countries an individual's legal name is the patronymic. Thus, Francisco Jose Garcia Ibañez is more properly referred to as Mr. Garcia. That convention will be followed throughout this Order.

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Plaintiff has not moved to withdraw the foregoing statement and it remains a matter of record in this case.

7. In response to a request to produce a fully executed copy of the purported written contract, Plaintiff stated as follows:

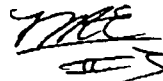
““For Defendants’ information, Defendant [sic, Plaintiff] believes there are none currently responsive to Request 1 (if requesting one with Ibanez’s signature.)”

8. Despite the foregoing judicial admission, at oral argument on May 20, 2013, when asked by the Court “What kind of contract, oral or written?”, Plaintiff’s counsel responded “Certainly an oral one, your honor.” (Transcript, May 20, 2013, p. 11, ll. 15-17.)

9. Further, on October 15, 2013, Plaintiff’s counsel made the following admission regarding the alleged contract with reference to the Affidavit of Miguel Coves that was filed after the pending Motion for Summary Judgment had been fully briefed:

“ Was there a contract? The affidavit of Miguel Coves says yes there was. It was an oral agreement that the parties worked on over lengthy meetings, visits from Spain where the man and his family were hosted in the United States, much expense, multiple visits.”

10. In an Affidavit dated April 24, 2013, a principal of Coves Darden, Miguel Coves, filed an Affidavit in which he asserted that the alleged oral contract of employment contemplated employment by Mr. Garcia for between two and three years. (“We entered into an agreement to employ [Garcia] to act as an expert equestrian trainer, and to provide expert instruction and consultancy services in the equestrian arts for clients of Coves Darden Farm. *We both acknowledged we expected the relationship to continue for at least two years.*”) Affidavit of Miguel Coves, ¶ 6.



LEGAL STANDARD FOR SUMMARY JUDGMENT

One of the principal purposes of summary judgment is to isolate and dispose of factually unsupported claims or defenses, and it should be interpreted in a way that allows it to accomplish this purpose. *Celotex Corp. v. Catrett* 477 U.S. 317 (1986). After the moving party files an appropriate motion, the burden shifts to the non-moving party to demonstrate the existence of admissible evidence establishing a triable issue of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). If the non-moving party cannot do so, summary judgment is appropriate. *Id.* The non-moving party cannot defeat the motion by relying upon the mere allegations of the complaint, but must disclose sufficient facts by affidavit or other proof. *Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 6512, 655 (Ct. App. 1994). Conclusory statements as to ultimate issues are not sufficient to create a genuine issue of fact for purposes of resisting summary judgment. *Id.* The Court is also free to ignore contradictory affidavits that attempt to create a triable issue of material fact, particularly when the affidavit is filed after a Motion for Summary Judgment. *See e.g. Coffey v. Jenkins*, 117 S.C. 321 (S.C. 1920) ("Where a continuance is sought to procure the attendance of an absent witness, and the adverse party, to avoid the postponement, admits that the witness will testify as stated in the affidavit filed for the purpose, the evidence thus given cannot be discredited on the trial by proof of contradictory statements. The party making the admission cannot be allowed to extricate himself from a situation created by his own voluntary act, in disregard of fixed rules of practice and evidence."); *Cothran v. Brown*, 357 S.C. 210 (S.C. 2004) ("[A] court may disregard a subsequent affidavit as a 'sham,' that is, as not creating an issue of fact for purposes of summary judgment, by submitting the subsequent affidavit to contradict that party's own prior sworn statement.") Summary judgment is appropriate when it is

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clear that there is no genuine issue of material fact. *C&S National Bank v. Lanford*, 313 S.C. 540, 443 S.E.2d 549, 551 (1994).

DISCUSSION

A. Plaintiff's Claim for Breach of Contract

In this case, Plaintiff, both directly and through its counsel, has made several contradictory statements regarding the nature of the relationship between Covos Darden and Defendant Garcia. In responding to Interrogatories, Plaintiff judicially admitted that there was no oral contract of employment, but only a written agreement that was allegedly "acknowledged" by Defendant Garcia. However, in responding to a Request to Produce, Plaintiff admitted that it had no written agreement signed by Defendant Garcia. At a hearing in this matter on May 5, 2013, Plaintiff's counsel contradicted his client's interrogatory responses and asserted that the agreement between the parties was, in fact, an oral agreement. On April 24, 2013, Miguel Covos, a principal of Plaintiff, filed an Affidavit in which he alleged that the agreement between the parties was an oral agreement of employment for between two and three years. This position was further stated during the May 20, 2013 hearing. At a final hearing on the Motion for Summary Judgment on October 15, 2013, Plaintiff's counsel reiterated the contention that the agreement was, in fact, an oral agreement.

Regardless of which version the Court accepts, the end result is the same. If the Court accepts Plaintiff's responses to an Interrogatory and a Request to Produce, then the Court is left with the conclusion that there was: a) no oral agreement between the parties, and b) no written agreement signed by the party to be charged, Defendant Garcia. On the other hand, if the Court ignores these earlier party admissions and accepts the belated contention of Plaintiff that there was no written contract of employment, but only an alleged oral agreement for employment


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between two and three years duration, the Court is again left with the fact that there is no writing signed by the party to be charged, Defendant Garcia, and, therefore, the alleged oral agreement violates the Statute of Frauds and is unenforceable.¹

The Court is also mindful of the fact that, under South Carolina law, there is a presumption of at will employment, absent evidence of the creation of an enforceable contract of employment. *Prescott v. Farmers Tel. Coop., Inc.*, 335 S.C. 330, 334 (S.C. 1999). Regardless of which version of Plaintiff's admissions the Court accepts, the result is the same: as a matter of law, Plaintiff has failed to overcome the presumption of at will employment.

"South Carolina has long recognized the doctrine of employment at-will. At-will employment is generally terminable by either party at any time, for any reason or for no reason at all. *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 278 S.E.2d 607 (1981), *appeal after remand*, 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984), *writ granted in part*, 285 S.C. 84, 328 S.E.2d 479 *quashed*, 287 S.C. 190, 336 S.E.2d 472 (1985); *Culler v. Blue Ridge Elec. Coop. Inc.*, 309 S.C. 243, 245, 422 S.E.2d 91, 92 (1992)." *Prescott, supra*.

Further, the termination of at-will employment does not give rise to a cause of action for breach of contract. *Hudson v. Zenith Engraving Co., Inc.*, 273 S.C. 766, 259 S.E.2d 812 (1979).

In summary, Plaintiff, who bears the burden of proof on the issue at trial, has failed to demonstrate by competent evidence the existence of a triable issue of material fact regarding the existence of either an enforceable oral contract of employment or an executed written contract of employment signed by Defendant Garcia. Therefore, summary judgment is proper with respect to the cause of action for breach of contract.

¹ In South Carolina, any agreement that is not to be performed within one year must be in writing and signed by the party against whom it is seeking to be enforced. See S.C. Code § 32-3-10(5).

Handwritten signature and initials, possibly "J. D. [unclear]" and "H. P.", in black ink.

B. Plaintiff's Cause of Action for Breach of Fiduciary Duties of Loyalty, Honesty and Information

This Court is persuaded that there are no fiduciary duties of loyalty owed by a non-contractual, non-fiduciary employee subject only to the rules for common law at will employment. South Carolina cases finding a cause of action for breach of the duty of loyalty have all involved upper level managerial employees. *See Loundes Products, Inc. v. Brower*, 259 S.C. 322 (S.C. 1972) (key employees meeting with investors and current customers of employer while starting competing business liable for breach of duty of loyalty.); *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598 (S.C. 1999) (Manager of Operations); *Young v. McKelvey*, 286 S.C. 119 (S.C. 1985) (Vice-President of Sales).

On the other hand, research has failed to disclose any published opinion from South Carolina courts finding a duty of loyalty on the part of a non-managerial, at will employee. The law from other jurisdictions supports the proposition that no such duty of loyalty exists.

Courts from around the United States are generally unsympathetic to breach of duty of loyalty claims in the absence of a confidential or fiduciary relationship, or in the absence of a contract of employment. The North Carolina Supreme Court's opinion in *Dalton v. Camp*, 353 N.C. 647 (2001), is persuasive. In that case, the Court held that outside the context of a fiduciary relationship, "there is no basis for recognizing an independent tort claim for a breach of a duty of loyalty. . . ." *Id* at 652. The Court further noted:

"Under the general rule, 'the relation of employer and employee is not one of those regarded as confidential.' *King v. Atlantic Coast Line R.R. Co.*, 157 N.C. 44, 72 S.E. 801 (1911); *see also Hiatt v. Burlington Indus., Inc.*, 55 N.C. App. 523, 529, 286 S.E.2d 566, 569, *disc. rev. denied*, 305 N.C. 395, 290 S.E.2d 365 (1982)."

See also *Combs & Assocs. v. Kennedy*, 147 N.C. App. 362 (N.C. App. 201):



"Our Supreme Court has recently addressed the issue of an at-will employee's duty of loyalty to his employer in the context of starting a competing company. See *Dalton v. Camp*, 353 N.C. 647, 548 S.E.2d 704 (2001). In *Dalton*, the Court held that, outside the purview of a fiduciary relationship, our State does not recognize an independent tort for breach of duty of loyalty by an at-will employee. *Id.* at 652, 548 S.E.2d at 708. Plaintiff presents no evidence that it held a fiduciary relationship with [Defendant]."

The law in other jurisdictions is in accord. *Mattel, Inc. v. MGA Entertainment, Inc.*, 2011 U.S. Dist. LEXIS 55756 (C.D. Cal. 2011) (Refusing to recognize the tort of breach of the duty of loyalty in the employment context); *Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 254 Cal. Rptr. 211, 765 P.2d 373 (Cal. 1988) (Tort duties should not be wantonly interjected into contractual relationships.); *Oki America, Inc. v. Microtech Intn'l, Inc.*, 872 F.2d 312 (9th Cir. 1989), Kozinski, concurring ("Not every slight, nor even every wrong, ought to have a tort remedy. The intrusion of courts into every aspect of life, and particularly into every type of business relationship, generates serious costs and uncertainties, trivializes the law, and denies individuals and businesses the autonomy of adjusting mutual rights and responsibilities through voluntary contractual agreement.").

Moreover, although Plaintiff made general allegations regarding the existence of some type of fiduciary relationship between the parties, the Complaint and subsequent affidavits contain no specific facts from which a reasonable trier of fact could find the existence of a fiduciary relationship in the context of an at will employee. Mere conclusory allegations without reference to specific facts are not sufficient to avoid summary judgment. *Ayers v. Pastime Amusement Co.*, 283 F. Supp. 773 (D.S.C. 1968); *Simpkins v United States*. 253 F Supp 2d 4 (D.C. Colo. 2003).

In responding to summary judgment motion, the non-moving party may not rely solely on mere conclusory allegations. Rather, to avoid summary judgment, the nonmoving party must be

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able to point to specific, competent evidence to support his claim; mere allegations, or conjecture unsupported in record, are insufficient to raise genuine issue of material fact. *August v Offices Unlimited, Inc.*, 981 F2d 576 (1st Cir. 1992).

For the foregoing reasons, Defendant Garcia should be granted to summary judgment with respect to the cause of action for breach of fiduciary duties of loyalty, honesty and information.

C. Cause of Action against Defendant Derr for Tortious Interference

Plaintiff also seeks to hold Defendant Dori Derr liable for tortious interference with contract. Mrs. Derr should be granted summary judgment on this issue.

The elements of a cause of action for tortious interference with contract in South Carolina are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages." *Camp v. Springs Mortgage Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 305 (S.C. 1993).

In addition to the existence of a valid contract, an essential element to the cause of action for tortious interference with contractual relations is the intentional procurement of the contract's breach. *Kinard*, 315 S.C. at 240, 433 S.E.2d at 837. Where there is no breach of the contract, there can be no recovery. *First Union Mortg. Corp. v. Thomas*, 317 S.C. 63, 73, 451 S.E.2d 907, 913 (Ct. App. 1994). That factor alone is fatal to Plaintiff's claim.

Additionally, Plaintiff has not come forward with any admissible evidence from which a reasonable trier of fact could conclude that Defendant Derr intentionally procured the breach of contract. Moreover, as this Court has already found, Plaintiff has failed to demonstrate the existence of a legally enforceable contract of employment and there can be no cause of action for tortious interference with contract in the absence of an enforceable contract.

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While the failure to establish a triable issue of fact with respect to two elements of Plaintiff's cause of action is sufficient to support this Court's grant of summary judgment, the Court notes that the majority of jurisdictions around the United States also recognize a further qualified privilege for individuals who offer employment to the at-will employee of a competitor.

Perhaps the most succinct statement of the legal principle, and the collection of authorities from around the United States is *Peoples Security Life Ins. Co. v. Hooks*, 322 N.C. 216 (N.C. 1988), where the North Carolina Supreme Court summarized the law and authorities with respect to tortious interference claims brought by a competitor:

"[W]e recognize and apply the general principle that interference may be justified when the plaintiff and the defendant are competitors. *Childress v. Abeles*, 240 N.C. 667, 84 S.E. 2d 176. See also, *Bennett v. Storz Broadcasting Co.*, 270 Minn. 525, 134 N.W. 2d 892 (1965); *Schonwald v. Ragains*, 32 Okla. 223, 122 P. 203 (1912); *Philadelphia Dairy Prod. v. Quaker City Ice Cream Co.*, 306 Pa. 164, 159 A. 3 (1932); *Thacker Coal & Coke Co. v. Burke*, 59 W.Va. 253, 53 S.E. 161 (1906). *Contra Moyer v. Eure*, 21 N.C. App. 261, 205 S.E. 2d 221 (1974); *Overall Corp. v. Linen Supply, Inc.*, 8 N.C. App. 528, 174 S.E. 2d 659 (1970). Further, we find the well-reasoned opinion of Judge Learned Hand in *Triangle Film Corp. v. Artcraft Pictures Corp.*, 250 F. 981 (2d Cir. 1918) to be persuasive. Judge Hand, writing for the majority in that case, stated that public policy demands that absent some monopolistic purpose everyone has the right to offer better terms to another's employee, so long as the latter is free to leave. *Id.* A contrary result would be intolerable, both to the new employer who could use the employee more effectively and to the employee who might receive added pay. *Id.* To hold otherwise would unduly limit lawful competition. *Id.* "Later cases adopt the rationale of *Triangle Film*. The free enterprise system demands that competing employers be allowed to vie for the services of the 'best and brightest' employees without fear of subsequent litigation for tortious interference. See *McCluer v. Super Maid Cook-Ware Corp.*, 62 F. 2d 426 (10th Cir. 1932); *Vincent Horwitz Co. v. Cooper*, 352 Pa. 7, 41 A. 2d 870 (1945); *Diodes, Inc. v. Franzen*, 260 Cal. App. 2d 244, 67 Cal. Rptr. 19 (1968); *Coleman & Morris v. Pisciotto*, 107 N.Y.S. 2d 715, 279 A.D. 656 (1951). To restrict an employer's right to entice employees, bound only by terminable at will contracts, from their positions with a competitor or to restrict where those employees may be put to work once they accept new employment savors strongly of oppression.

'Competition . . . is the life of trade. Every act done by a trader for the purpose of diverting trade from a rival, and attracting it to

himself, is an act intentionally done, and, in so far as it is successful, to the injury of the rival in his business To hold such an act wrongful and illegal would be to stifle competition. Trade should be free and unrestricted; and hence every trader is left to conduct his business in his own way, and cannot be held accountable to a rival who suffers a loss of profits by anything he may do, so long as the methods he employs are not of a class of which fraud, misrepresentation, intimidation, coercion, obstruction, or molestation of the rival or his servants . . . are instances.'

"*Macaulay Bros. v. Tierney*, 19 R.I. 255, 256, 33 A. 1, 2 (1895), cited with approval in *C. S. Smith Metro. Mkt. v. Lyons*, 16 Cal. 2d 389, 106 P. 2d 414 (1940); *Kingston Trap Rock Co. v. International Union of Operating Engineers*, 129 N.J. Eq. 570, 19 A. 2d 661 (1941)."

See also *Combs & Assocs. v. Kennedy*, 147 N.C. App. 362 (N.C. App. 2001) ("[O]ur Supreme Court has held that the mere enticement and hiring of an at-will employee by a competing company, absent an improper motive, does not give rise to a tortious interference with a contract claim.").

To this extensive collection of authorities, this Court can add a reference to *Baxter Research Med., Inc. v. Medtronic, Inc.*, 1999 U.S. App. LEXIS 2850 (4th Cir. 1999), applying Virginia law:

In particular, Baxter seeks to bar KOL's efforts to improve the lot of its employees and Medtronic's efforts to improve its workforce. 'Nobody has ever thought, so far as we can find, that in the absence of some monopolistic purpose every one has not the right to offer better terms to another's employe, so long as the latter is free to leave. The result of the contrary would be intolerable, both to such employers as could use the employe more effectively and to such employes as might receive added pay. It would put an end to any kind of competition.' *Triangle Film Corp. v. Aircraft Pictures Corp.*, 250 F. 981, 982 (2d Cir. 1918). Here, Medtronic engaged in permissible, albeit aggressive, competition. Baxter may wish it had an agreement that prevented this competition, but the one for which it bargained did not do so.

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The Complaint in this case alleges that Dori Derr and Half Moon are competitors of Coves Darden (Complaint, ¶¶ 45, 46). Because the foregoing authorities represent the majority view, this Court is further persuaded to grant summary judgment on the tortious interference with contract claim on this additional and independent basis separate from the Plaintiff's failure to submit sufficient evidence to carry its burden as to each element of this claim.

Based on the above, this Court grants Defendant Derr summary judgment on the claim for tortious interference with contract.

D. Cause of Action Against Derr and Half Moon for violation of the South Carolina Unfair Trade Practices Act.

Derr and Half Moon should be granted summary judgment with respect to the cause of action seeking recovery for alleged violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.* ("SCUTPA").

To maintain a private cause of action under SCUTPA, a plaintiff must establish: (1) the defendant engaged in an unlawful trade practice; (2) the plaintiff suffered actual, ascertainable damages as a result of the defendant's use of the unlawful trade practice; and (3) the unlawful trade practice engaged in by the defendant had an adverse impact on the public interest. *Daisy Outdoor Advertising Co. v. Abbott*, 322 S.C. 489, 473 S.E.2d 47, 49 (S.C. 1996); *Havird Oil Co. v. Marathon Oil Co.*, 149 F.3d 283, 291 (4th Cir. 1998).

SCUTPA only creates causes of action in those suffering a loss as a result of a deceptive act. *Collins Holding Corp. v. Defibaugh*, 373 S.C. 446, 646 S.E.2d 147, 150 (Ct. App. 2007). SCUTPA also only applies to matters affecting the public interest. "While every private dispute doubtless has remote public ramifications, these cannot be held to satisfy the element of injury to the public interest which is a prerequisite to any recovery under the UTPA. Were the rule



otherwise, every ordinary commercial dispute would become a candidate for the extraordinary remedies provided by the Act." *Bessinger v. Food Lion, Inc.*, 305 F. Supp. 2d 574 (D.S.C. 2003); *Omni Outdoor Adver., Inc. v. Columbia Outdoor Adver., Inc.*, 974 F.2d 502, 507-08 (4th Cir. 1992).

Plaintiff claims that Defendants Derr and Half Moon made two statements that allegedly violated SCUPTA: a) That Defendant Garcia was in the United States on an extended teaching sabbatical, and b) that Defendant Garcia was based at Half Moon Stables. (Complaint, ¶ 45).

However, in its Opposition to Defendants' Motion for Summary Judgment, Plaintiff conceded that "[The statements] are technically true under one understanding of the word 'sabbatical,' and in the further sense that Ibañez is now based at HalfMoon" (Plaintiff's Opposition to Motion for Summary Judgment, p. 48).

Plaintiff's Opposition never elaborated on what other possible "understandings" there could be of the two statements. Nevertheless, Plaintiff has conceded that the two statements are "technically true."

As noted above, the first element of a cause of action for deceptive trade practices is that there be a deceptive act. Plaintiff has not pointed the Court to any case from any jurisdiction finding that a true statement of fact could be a deceptive act. ~~The Court has failed to discover any such authority on its own.~~ ^{DAE}

Plaintiff's claim also fails to satisfy the third element of a SCUPTA claim: that the deceptive act affect the public interest. Plaintiff has failed to offer anything other than vague, unsubstantiated claims that any member of the public was deceived by hearing admittedly true statements.

Plaintiff's claim is more in the nature of a private dispute between the parties, and the impact on the public interest, if any, is too remote to satisfy this element. *Bessinger v. Food Lion, Inc.*, 305 F. Supp. 2d 574 (D.S.C. 2003).

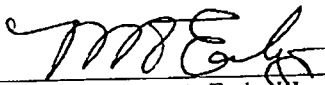
CONCLUSION

For the above-stated reasons, the Court concludes that there are no genuine issues of material fact and that Defendants' Motion for Summary Judgment should be granted.

Therefore, it is ORDERED, ADJUDGED, and DECREED that Defendant's Motion for Summary Judgment is GRANTED.

It is so ORDERED.

This the 5 day of Dec, 2013.


The Honorable Doyet A. Early, III
Presiding Judge
Second Judicial Circuit

Bamberg, South Carolina

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012CP0201772

Coves Darden, Llc	Francisco Jose Ibanez Half Moon Stables, Llc
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

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- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award. Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THIS CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order. (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

12/20/2013

Circuit Court Judge	Judge Code	Date
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