STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	CIVIL ACTION NO.: 2011-CP-25-343
LYDIA COOK,	)	
	)	
Plaintiff,	)	
	)	**ORDER DENYING DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT**
v.	)	
	)	
REGIONS BANK AND ROBYN CLEVINGER,	)	
	)	
Defendants.	)	

This matter came before the Court on March 20, 2014, for hearing on Regions Bank and Robyn Clevinger's (collectively "Defendants") post-trial motion pursuant to Rule 50, SCRCP, for a judgment notwithstanding the verdict. Present before the Court were John E. Parker and William F. Barnes, III on behalf of the Plaintiff, Lydia Cook; John H. Tiller and Amy F. Bower on behalf of Regions Bank; and E. Mitchell Griffith on behalf of Robyn Clevinger. After reviewing the parties' submissions and hearing argument from counsel, the Court denies Defendants' post-trial motion pursuant to Rule 50, SCRCP for the reasons stated below.

STANDARD OF REVIEW

In considering a motion for a judgment notwithstanding the verdict ("JNOV"), the trial court must view all the evidence and its inferences in a light most favorable to the non-moving party. Horry County v. Laychur, 315 S.C. 364, 367, 434 S.E.2d 250, 261 (1993). If the evidence as a whole is susceptible to more than one inference, a jury issue is created and the motions for directed verdict and JNOV are properly denied. Hainer v. Am. Med. Intern., Inc., 320 S.C. 316, 320, 465 S.E.2d 112, 115 (Ct. App. 1995). When deciding a motion for a JNOV, the "trial judge is concerned with the existence, not its weight." Burns v. Universal Health Servs., Inc., 361 S.C. 221, 232, 603 S.E.2d 605, 611 (2004).

ANALYSIS

The Defendants move on several grounds for a JNOV. First, the Defendants contend that the Plaintiff failed to prove that a publication was made to a third-party. Based on the evidence presented at

trial, the Court finds that there was evidence that the defamatory statements were published to a third-party. The defamatory statement was published to third-parties including: Suzanne Freeman, Andree Lloyd, Holly Johnson, Patty Austin, Barbara Simpkins, and Robyn Clevinger's husband. Next, the Defendants contend that even if a publication was made, the only reasonable inference from the evidence is that the statement was privileged and not abused. (Memo. in Supp. p. 5). Based on the evidence presented in this case, I find that the evidence gave rise to a qualified privilege because the defamatory statements were published to other employees of Regions Bank. Under South Carolina law it is well established that "[f]actual inquiries, such as whether the defendants acted in good faith in making the statement, whether the scope of the statement was properly limited in its scope, and whether the statement was sent only to the proper parties, are generally left in the hands of the jury to determine whether the privilege was abused." Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 485, 514 S.E.2d 126, 134 (1999). The testimony of Andree Lloyd, among other evidence, supports an inference that management at Regions Bank knew Clevinger's defamatory statements were fabricated and not true. As a result, a factual issue was presented that warranted submission to the jury of whether the privilege was made in good faith or abused. By the jury awarding actual damages and, more specifically, punitive damages to the Plaintiff, the jury found under the Court's instructions that any qualified privilege was not made in good faith and the scope of the privilege was exceeded.

Finally, the Defendants contend that the Plaintiff presented no evidence that the Defendants' conduct was intentional or reckless, and as a result, punitive damages are not warranted. Andree Lloyd's testimony, among other evidence, supports an inference that management at Regions Bank knew Clevinger's defamatory statements were fabricated and not true. The evidence is also susceptible of an inference that Clevinger was using these statements to retaliate against Cook for the complaint Cook made about Clevinger on April 6, 2011. When a statement is subject to a qualified privilege, it is for the

plaintiff to show "malice in fact – that is, that the defendant was actuated by ill will in what he did and said, with the design to causelessly and wantonly injure the plaintiff." Bell v. Bank of Abbeville, 208 S.C. 490, 494-95, 38 S.E.2d 641 643 (1946). Actual malice is knowledge that the statement was false or made with reckless disregard of whether it was true or false. Swinton Creek Nursery, 334 S.C. at 485, 514 S.E.2d at 134. There was substantial evidence presented during the trial which warranted submission to the jury on whether the qualified privilege was abused or exceeded. This evidence also supports an inference that the defamatory statements were made with actual malice – that is intentionally or with reckless disregard.

CONCLUSION

Considering the evidence and testimony admitted during the trial, as a whole, in a light most favorable to the Plaintiff, as the Court is required to do, the Court denies Defendants' post-trial motion pursuant to Rule 50, SCRCP.

Brooks P. Goldsmith

Edisto Island, South Carolina
April 30, 2014