STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Derek Bryant, Wendell Richardson, Arvid Rutledge and Randy Simmons

Plaintiffs,

vs.

SAIC Engineering, Inc., Christina Broom, John Kiessling and Marcia Saari,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C. A. No. 2011-CP-08-2631

ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

RECEIVED
MAY 22 2015
SC Court of Appeals
2015 APR -6 PM 2:45
CLERK OF COURT
BERKELEY COUNTY, SC
FILED

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Anne Nicholson, Obie Varner, Lois Parker, Gloria Sinsuat, Elizabeth Sharper, Preston Grant, Alice Felder and Sebrina Walker

Plaintiffs,

vs.

SAIC Engineering, Inc., Christina Broom, John Kiessling and Marcia Saari,

Defendants.

This matter comes before the Court on the two motions for summary judgment filed by Defendants Science Applications International Corporation (improperly identified as SAIC Engineering, Inc.) ("SAIC"), John Kiessling ("Kiessling") and Marcia Saari ("Saari") (collectively "Defendants"). Specifically, on February 25, 2014, individually named Defendants Kiessling and Saari filed a motion for summary judgment, seeking dismissal from the case. On April 30, 2014, Defendants SAIC, Kiessling, and Saari filed a motion for summary judgment as to all causes of action against all Defendants.[1]

[1] Christina Broom was never properly served, and therefore was never a defendant in this case.

The Court held oral arguments on the motions on January 12, 2015, and verbally ordered the dismissal of Defendants Kiessling and Saari. During the hearing, the Court provided the remaining Plaintiffs (Nicholson, Parker, Sinsuat, Sharper, and Walker, all of whom were proceeding *pro se*)[2] with ten (10) days to supplement the record with admissible evidence to support their claims. Plaintiffs provided the court with additional information, which was considered by the Court.

Having considered the motions, memoranda, oral arguments, and additional information provided, and for the reasons discussed below, Defendants' Motions for Summary Judgment are GRANTED, and all claims against all Defendants are hereby DISMISSED, WITH PREJUDICE.

I. FACTS

This case arises out of Plaintiffs' employment relationship with SAIC at one of its Charleston facilities. Plaintiffs were all hired on an at-will basis and signed an at-will disclosure.

In March 2010, SAIC launched its iAppreciate program, which allowed employees to send $25 gift cards to other employees for outstanding work-related reasons. Nine (9) months later, in December 2010, it came to the attention of SAIC management that employees were "abusing" iAppreciate. SAIC conducted an investigation into the use of iAppreciate, which included interviewing all involved employees on January 18, 2011.[3] On January 18, 2011, Plaintiffs were asked by their supervisors to report to the North Rhett building (administrative office) for an unspecified reason. Once they arrived at North Rhett, Plaintiffs and other employees were asked to go to a "nice" conference room, which had a large conference table with chairs around it and along the wall and two (2) doors. Approximately forty (40) employees,

[2] Plaintiffs Derek Bryant, Wendell Richardson, Arvid Rutledge, Randy Simmons, Obie Varner, Preston Grant, and Alice Felder voluntarily dismissed their claims with prejudice against Defendants prior to the January 12, 2015 hearing.

[3] Plaintiff Nicholson was interviewed separately on January 19, 2011 because she was unavailable on January 18, 2011.

including Plaintiffs, were present in the conference room. Once everyone was in the room, the employees were asked to turn off their cell phones and place them on the table.

During the course of the day, Corporate HR Director Christina Broom and Assistant Project Manager and Individual Defendant John Kiessling called employees back for individual interviews. Human Resources representative Scott Wilson was in the room the entire day, except when he was relieved occasionally by a female Human Resources representative, Individual Defendant Marcia Saari. The doors to the conference room remained unlocked throughout the day. Upon request, employees were allowed to go to the bathroom. Aside from bathroom usage, none of the Plaintiffs attempted or requested to leave the room at any time. Further, no Plaintiff was physically restrained or threatened at any time. Plaintiffs acknowledge that they only felt compelled to remain in the large conference room due to an intrinsic fear of job loss.

Each Plaintiff was called back for his or her individual interview with Ms. Broom and Mr. Kiessling. The purpose of the individual interviews was to find out about each employee's use of the iAppreciate program and to determine whether individual employees were misusing the program. All of the Plaintiffs were paid their regular wage for their time in the large conference room and individual interviews. At the end of each individual interview, each employee was asked to read a confidentiality statement and was asked to keep the investigation "private." Each interviewed employee was placed on immediate administrative leave so that SAIC could complete its investigation.

After the interviews, Ms. Broom made disciplinary recommendations, based primarily on whether the employee was able to articulate a work-related reason for all awards given. The final disciplinary decisions were made based primarily on the employees' statements during the interviews, which confirmed violations of SAIC policy and/or breach of SAIC ethics policy/code

of conduct. Most employees were returned to work with no disciplinary action taken. All returned employees were paid for their days on administrative leave.

Following the interviews, SAIC determined which employees misused the iAppreciate program and/or violated other SAIC policies including, but not limited to, the nepotism policy, computer security policy, the ethics policy/code of conduct, and misuse of company assets. Employees who were in violation were terminated. The group of terminated employees included Plaintiffs Nicholson, Parker, Sinsuat, Sharper, and Walker.

None of the Plaintiffs provided any firsthand knowledge that SAIC management or supervisory personnel ever made any comments about the investigation, suspensions, or terminations to anyone outside the Company or non-supervisory personnel within the Company. Plaintiffs admit that they have no knowledge whether any management personnel, including Ms. Broom, Ms. Saari, or Mr. Kiessling, made any derogatory statements to others, or otherwise spread any rumors, regarding the investigation.

Following the investigation and resulting terminations, Plaintiffs filed two (2) lawsuits in State Court. The "Bryant" case involved four (4) non-terminated Plaintiffs[4] while the "Nicholson" case involved eight (8) terminated Plaintiffs.[5] The two (2) cases were consolidated by the Court. In addition, Plaintiff Nicholson filed a Federal Court case also alleging termination due to the iAppreciate program. Nicholson's Federal case included a breach of contract claim, which was dismissed by the Federal Court based on the fact that Nicholson was an at-will employee.

[4] Bryant, Richardson, Rutledge and Simmons
[5] Nicholson, Varner, Parker, Sinsuat, Sharper, Grant, Felder and Walker

II. DISCUSSION

A. The Doctrine of Workers' Compensation Exclusivity Bars the Third (Negligence), Fourth (False Imprisonment), Fifth (Intentional Infliction of Emotional Distress) and Eighth (Negligent Misrepresentation) Causes of Action and They Are Dismissed.

In their Complaint, Plaintiffs Nicholson, Parker, Sinsuat, Sharper, and Walker claim to have suffered work-related personal injuries in the causes of action for negligence, negligent misrepresentation, and intentional infliction of emotional distress, as well as for their claim for false imprisonment. Nicholson State Compl. ¶¶ 39, 44, 51, 71. Each of these causes of action is barred by the exclusivity provision of the South Carolina Workers' Compensation Act. S.C. CODE ANN. § 42-1-540. Pursuant to this provision, the Act is the exclusive remedy for an employee's work-related accident or injury, and the exclusivity provision precludes an employee from maintaining a tort action against an employer where the employee sustains a work-related injury. *Edens v. Bellini*, 597 S.E.2d 863, 867-68 (S.C. Ct. App. 2004).

The South Carolina appellate courts have specifically held that actions alleging negligence, negligent misrepresentation, and intentional infliction of emotional distress fall squarely within the "exclusivity provision" of the South Carolina Workers' Compensation Act. *See, e.g., McClain v. Pactiv Corp.*, 602 S.E.2d 87, 89 (S.C. Ct. App. 2004) (recognizing intentional infliction of emotional distress constitutes a personal injury that falls within the scope of the act) (citation omitted); *Sabb v. S.C. State Univ.*, 567 S.E.2d 231, 234 (S.C. 2002) (negligence claims arose out of and in the course of plaintiff's employment and, therefore, the Act provided the exclusive remedy); *Loges v. Mack Trucks, Inc.*, 417 S.E.2d 538, 540 (S.C. 1992) (holding summary judgment was appropriate as to plaintiff's claim for intentional infliction of emotional distress because it constitutes personal injury within the scope of the Act).

To the extent Plaintiffs have alleged to have suffered work-related personal injuries as a result of the alleged false imprisonment, which is a tort similar to torts the South Carolina state courts have held to be barred by the Workers' Compensation exclusivity provision, *see, e.g.*, *McClain v. Pactiv Corp.*, 602 S.E.2d 87, 89 (S.C. Ct. App. 2004) (recognizing intentional infliction of emotional distress constitutes a personal injury that falls within the scope of the act) (citation omitted); *Sabb v. S.C. State Univ.*, 567 S.E.2d 231, 234 (S.C. 2002) (negligence claims arose out of and in the course of plaintiff's employment and, therefore, the Act provided the exclusive remedy); *Loges v. Mack Trucks, Inc.*, 417 S.E.2d 538, 540 (S.C. 1992) (holding summary judgment was appropriate as to plaintiff's claim for intentional infliction of emotional distress because it constitutes personal injury within the scope of the Act), this claim is barred by the Workers' Compensation exclusivity provision.

Therefore, Plaintiffs' Third (Negligence), Fourth (False Imprisonment), Fifth (Intentional Infliction of Emotional Distress) and Eighth (Negligent Misrepresentation) Causes of Action are dismissed.

B. The Seventh Cause of Action for Promissory Estoppel Is Dismissed

Plaintiffs' Seventh Cause of Action is based on SAIC's "promises of gift cards to fellow co-workers." Nicholson State Compl. ¶ 59. To establish a claim for promissory estoppel, Plaintiffs must prove: (1) a promise unambiguous in its terms; (2) reasonable reliance on the promise by the party to whom it is made; (3) the reliance is expected and foreseeable by the party who made the promise; and (4) injury in reliance on the promise. *Powers Constr. Co. v. Salem Carpets, Inc.*, 322 S.E.2d 30, 33 (S.C. Ct. App. 1984) (citations omitted).

The receipt of gift cards by fellow employees is the only promise upon which Plaintiffs alleged they relied. As such, their claim for promissory estoppel must fail. A plaintiff cannot suffer damages for another person's failure to receive an award. *See Craft v. S.C. Comm. for the*

Blind, 685 S.E.2d 625, 629 (S.C. Ct. App. 2009) (without injury there is no cause of action for promissory estoppel). Therefore, summary judgment is granted as to Plaintiffs' claim for promissory estoppel.

C. The Sixth Cause of Action for Breach of Contract Claim Is Dismissed.

In support of their Sixth Cause of Action, Plaintiffs allege they "were provided written and verbal policies and procedures by Defendants as to their employment as well as use of the iAppreciate program" and that these alleged policies "created a binding contract with Defendants." Nicholson State Compl. ¶¶ 52, 54. The Plaintiffs contend that a contract was created that overruled the admitted at-will employment status of each employee. Whether the elements of a contract have been met is a question of law for the court. *Armstrong v. Collins*, 366 S.C. 204 621 S.E.2d 368 (Ct. App. 2005).

1. Plaintiff Nicholson's Sixth Cause of Action for Breach of Contract Claim Is Dismissed

All Plaintiffs signed at-will disclosures at the time of their hire. All also received the same handbook and other policy documents. As stated earlier, in addition to this lawsuit, Plaintiff Nicholson also filed a federal complaint based on the iAppreciate program and her termination. *Nicholson v. Science Applications Int'l Corp.*, No. 2:12-cv-02779 (D.S.C. Sept. 25, 2012) (Doc. No. 1, Compl.). As part of her federal lawsuit, Nicholson alleged a breach of contract claim. *Id.* ¶¶ 71-79. Upon a motion to dismiss, the District Court of South Carolina issued a detailed Report and Recommendation ("R&R"), *Nicholson v. Science Applications Int'l Corp.*, No. 2:12-cv-02779 (D.S.C. Nov. 27, 2012) (Doc. No. 10, R&R), which was specifically adopted by the United States District Court, *Nicholson v. Science Applications Int'l Corp.*, No. 2:12-cv-02779 (D.S.C. Nov. 17, 2012) (Doc. No. 21, Order), that determined Nicholson's employment with SAIC was at-will. Under the doctrine of *res judicata*, "[a] litigant is barred

from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Judy v. Judy*, 363 S.C. 160, 712 S.E.2d 408 (S.C. 2011).

Plaintiff Nicholson is, therefore, subject to the doctrines of collateral estoppel and *res judicata* because the issue of her status as an at-will (non-contractual) employee was determined by the District Court. The breach of contract claim as to Plaintiff Nicholson is dismissed because Nicholson was an at-will employee.

2. Plaintiffs Parker, Sinsuat, Sharper, and Walker's Breach of Contract Claims are Dismissed

With respect to employment there is a presumption in South Carolina that employees are at-will. *See Nicholson* R&R at 2 (quoting *Amason v. P.K. Mgmt., LLC*, No. 10-1752, 2011 WL 1100169, at *6 (D.S.C. March 23, 2011)); *see also Prescott v. Farmer's Tel. Coop., Inc.*, 516 S.E.2d 923, 927, n. 8 (S.C. 1999). No Plaintiff presented any proof or made any non-conclusory allegation that any Plaintiff and SAIC entered into mandatory and binding terms of employment. The Plaintiffs also admitted they knew they could be discharged at any time, for any reason, and that they could quit their jobs at any time. Further, both Nicholson and all of the other Plaintiffs received the same documents and handbook and signed the following acknowledgment referenced by the District Court:

> I understand that no statement in this form, related administrative policies, or an offer of employment is to be construed as an employment contract, and that either party, without the other's consent, may terminate the employment relationship at any time, for any reason, with or without cause or notice. Any agreement which various the right of the employee or SAIC to terminate the employment relationship at any time, with or without cause or notice, must be set forth in an express written agreement and signed by both the employee and SAIC's Senior Vice President, Human Resources.

Therefore, for the same reason that Nicholson's breach of contract claim is dismissed (collateral estoppel) and because Plaintiffs did not establish that a contract existed that altered

their at-will employment relationships, their Sixth Cause of Action for breach of contract is dismissed.

D. The Fourth Cause of Action (False Imprisonment) Is Dismissed

"False imprisonment is the deprivation of one's liberty without justification." *Jones by Robinson v. Winn Dixie Greenville, Inc.*, 456 S.E.2d 429, 432 (S.C. 1995) (citation omitted). To establish a cause of action for false imprisonment, Plaintiffs must prove (1) Defendants restrained Plaintiffs; (2) the restraint was intentional; and (3) the restraint was unlawful. *Id.* Plaintiffs' claim is dismissed because (1) Plaintiffs voluntarily entered and remained in the conference room and did not ask if they could leave, thereby giving consent. *Beraho v. S.C. State Coll.*, 394 S.E.2d 28, 29 (S.C. Ct. App. 1990) (an employee's consent to such confinement in a workplace investigation bars the right to recovery under South Carolina law); (2) Plaintiffs' fear of job loss is not sufficient, as a matter of law, to support a claim of false imprisonment, *Johnson v. United Parcel Servs., Inc.*, 722 F. Supp. 1282, 1284-85 (D. Md. 1989) (fear of job loss insufficient even when the employer made a verbal threat to terminate employment if the employee left the interview); *see also Kelly v. West Cash & Carry Bldg. Materials Store*, 745 So.2d 743, 750 (La. Ct. App. 1999) (fear of job loss insufficient even when employer verbally refused to curtail the employee's interview); *see also Hanna v. Marshall Field & Co.*, 665 N.E.2d 343, 349-50 (Ill. App. Ct. 1996) (fear of job loss insufficient even when employee detained for five (5) hours, the employer denied requests to leave the room, and the doors were closed); *see also Marten v. Yellow Freight Sys.*, 993 F. Supp. 822, 829-30 (D. Kan. 1998) (fear of job loss insufficient even when employer berated employee, stood over him, blocked his path to the door, covered the doorknob with his hands, and directed the employee to sit down); *see also Miraliakbari v. Pennicooke*, 561 S.E.2d 483, 488-89 (Ga. Ct. App. 2002) (fear of job loss insufficient even when employer recklessly refused to allow at-will employee to leave the

premises to care for her injured son); and (3) employers have a right to direct the actions of employees while on the job. *Randall's Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 645 (Tex. 1995).

Therefore, as a matter of law, Plaintiffs' false imprisonment claim cannot survive summary judgment. Further, Plaintiff Nicholson was not interviewed on the day in question and, for this additional reason, she has no basis for a false imprisonment claim.

E. The First (Defamation – Slander *per se*) and Second (Libel *per se*) Causes of Action Are Dismissed

For Plaintiffs to prevail in an action for defamation under South Carolina law, they must allege and prove the statement: (1) had a defamatory meaning; (2) was published with actual or implied malice; (3) was false; (4) was published by the defendants; (5) concerned the plaintiffs; and (6) resulted in presumed damages or in special damages to the plaintiffs. *See Parker v. Evening Post Publ'g Co.*, 452 S.E.2d 640, 644 (S.C. Ct. App. 1994).

Plaintiffs attempt to support their defamation claims by pointing to two (2) categories of conduct. First, the Plaintiffs allege in conclusory fashion that Defendants "damaged the Plaintiffs' reputations through actions and communications of false spoken messages to third parties . . . which alleged, among other things that the Plaintiffs committed alleged crimes of moral turpitude." Nicholson State Compl. ¶¶ 27, 32. Second, Plaintiffs contend that the act of terminating their employment was itself defamatory. Neither allegation is sufficient to state a claim for defamation.

Plaintiffs failed to provide one single "specific defamatory comments" or the "time, place, content, and listener of [any] alleged defamatory [statement]." *See English Boiler & Tube, Inc. v. W.C. Rouse & Sons, Inc.*, No. 97-2397, 1999 WL 89125, at *3 (4th Cir. Feb. 23, 1999) (internal quotation omitted). Therefore, Plaintiffs' defamation claims are dismissed. *See*

Campbell v. Int'l Paper Co., No. 12-3042, 2013 WL 1874850, at *4 (D.S.C. May 3, 2013) (finding that plaintiff had not sufficiently pleaded the element of publication to a third party because plaintiff failed to allege "to whom the defendants made the statements at issue."); *Yost v. Charleston*, No. 09-2024, 2009 WL 4162274, at *3-4 (D.S.C. Nov. 24, 2009) (dismissing defamation claim based on employer's alleged statements about terminated employee for failure to allege sufficient detail as to circumstances of alleged statements).

Plaintiffs also contend the act of investigating and terminating their employment was itself defamatory. Plaintiffs allege that because they were asked to report to the conference room, everyone knew other employees were being investigated and, therefore, knew why they were terminated. As admitted by the Plaintiffs, however, Defendants did not tell anyone why any specific Plaintiff was questioned and did not convey the purpose of the investigation. Plaintiffs further acknowledge that co-employees, not the Defendants, were the broadcasters of the reasons for the investigation.

As the United States District Court for the District of South Carolina noted in *Johnson v. Dillard's, Inc.*, No. 03-3445, 2007 WL 2792232, at *1 (D.S.C. Sept. 24, 2007), the public policy implications of construing the mere act of terminating an employee as defamatory are substantial, as merely terminating an employee should not create automatic liability. *Id.* at *18 n.21. Plaintiffs would have every termination after a workplace investigation constitute defamation. A mere termination, without more, does not constitute defamation. *See Zielinski v. Clorox Co.*, 450 S.E.2d 222, 225-26 (Ga. Ct. App. 1994) (the act of "termination carried no defamatory implication," even if it confirmed earlier suspicions, as "the law of 'innuendo' does not permit the enlargement of this single true, unambiguously noncritical statement [such as the employee's termination] into defamation on the grounds of other rumors or suspicions others

may have received."). Because no facts have been submitted that support *per se* slander by way of an action other than participation in questioning during a workplace investigation and subsequent termination, this cause of action is dismissed. Further, this cause of action is dismissed as to Plaintiff Nicholson because she was not part of the alleged investigation that occurred on January 18, 2011.

Plaintiffs' own expert testified she agreed the actions of the terminated Plaintiffs in regards to the use of the iAppreciate program were unethical and, therefore, a violation of SAIC policy, which subjected them to termination. Therefore, by the Plaintiffs' own admission, the alleged communications via the action of termination do not contain any falsehood. Therefore, even if Defendants did communicate Plaintiffs' termination to anyone verbally or via action (which Defendants deny), the reason for the action is true. Truth is a defense to defamation. *Beckham v. Sun News*, 344 S.E.2d 603, 604 (S.C. 1986). For this additional reason, Plaintiffs' defamation claim is dismissed.

III. CONCLUSION

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that Defendants' Motions for Summary judgment are GRANTED. All of Plaintiffs' claims against all Defendants are hereby DISMISSED, WITH PREJUDICE.

IT IS SO ORDERED.

The Hon. J.C. Nicholson, Jr.

Charleston, South Carolina
March 30, 2015

20580400.3