STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
JACOB GREENSPAN, Plaintiff, v. BROTHERS PROPERTY CORPORATION, BROTHERS PROPERTY MANAGEMENT CORPORATION, VICTOR FULLER, Individually and in his official capacity, ANA REINA, Individually and in her official capacity, and OLIVER ROOSKENS, Individually and in his official capacity, Defendants.	)	CASE NO. 2014-CP-10-4445

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

This matter is before the Court on the Motion to Dismiss Plaintiff's First Amended Complaint pursuant to South Carolina Rule of Civil Procedure 12(b)(6) filed by Defendants Brothers Property Corporation and Brothers Property Management Corporation (Brothers).[1] On June 23, 2015, the Clerk of Court provided notice to Plaintiff of the hearing on Brothers' motion by letter to the address Plaintiff listed on the pleadings in this case. Additionally, Brothers' counsel notified Plaintiff of the hearing on Brothers' motion by letter dated June 23, 2015 sent to the address Plaintiff listed on the pleadings in this case. Nevertheless, Plaintiff did not appear for oral argument. The Court heard oral argument on this motion from Brothers on July 28, 2015.

Having heard Brothers' oral argument and considered the filings, I hereby grant Defendants' motion to dismiss Plaintiff's First Amended Complaint in its entirety and with

[1] Only Brothers Property Corporation and Brothers Property Management Corporation (collectively, "Brothers") have been served with process in this case.

prejudice on the basis that each cause of action fails to state a claim for which relief may be granted.

STANDARD OF REVIEW

Rule 12(b)(6) of the South Carolina Rules of Civil Procedure provides that a cause of action should be dismissed if the plaintiff fails to allege facts that would entitle him to any relief. *Pyler v. Burns*, 373 S.C. 637 (S.C. 2007); *Toussaint v. Ham*, 292 S.C. 415 (S.C. 1987). A plaintiff has the burden of pleading sufficient facts to establish each element of his cause of action. *Moore v. City of Columbia*, 284 S.C. 278 (S.C. Ct. App. 1985). In considering a Rule 12(b)(6) motion, the court only considers the factual allegations in a plaintiff's complaint. *Spence v. Spence*, 368 S.C. 106 (S.C. 2006).

FACTUAL BACKGROUND

The relevant factual allegations set forth in the First Amended Complaint are as follows: Plaintiff is a former employee of Defendant Brothers Property Management Corporation, which is doing business as Charleston Harbor Resort and Marina, a hotel, restaurant, and marina facility located in Mt. Pleasant, South Carolina. Plaintiff was terminated from his position in June 2012. In his First Amended Complaint, Plaintiff asserts 19 causes of action stemming from his employment and termination. Specifically, Plaintiff asserts the following claims: (1) Negligent Hiring, Retention, and Supervision; (2) Negligence/Gross Negligence; (3) Fraud in the Inducement; (4) Breach of Fiduciary Duty; (5) Fraudulent Concealment; (6) Breach of Oral Contract; (7) Breach of Contract Accompanied By Fraudulent Act; (8) Breach of Fiduciary Duty; (9) Breach of Fiduciary Duty; (10) Fraudulent Concealment; (11) Fraud/Fraud Concealment; (12) Violation of the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10 *et seq.* (the "Payment of Wages Act"); (13) Quantum Meruit; (14)

Breach of Fiduciary Duty; (15) Defamation; (16) Intentional Interference with Contractual Relations; (17) Wrongful Discharge in Violation of Public Policy; (18) Wrongful Discharge in Breach of Contract; and (19) Intentional Infliction of Emotional Distress.

ANALYSIS

1. Multiple Causes of Action Are Barred by South Carolina's Workers' Compensation Act.

Plaintiff's First, Second, and Nineteenth Causes of Action are barred by the exclusivity provision of South Carolina's Workers' Compensation Act (the "Act") and must be dismissed as a matter of law. The Act provides the exclusive remedy against an employer for an employee who sustains work-related injuries. *Fuller v. Blanchard*, 358 S.C. 536 (S.C. Ct. App. 2004); *see also Strickland v. Galloway*, 348 S.C. 644, 646 (S.C. Ct. App. 2002) ("In circumstances in which the [ ] Act covers an employee's work-related accident, the Act provides the exclusive remedy against the employer."). This exclusive remedy doctrine provides that an employer receives immunity from wrongful actions committed by an employee conducting the employer's business, and the South Carolina Workers' Compensation Commission has exclusive original jurisdiction over such claims. *Sabb v. S.C. State Univ.*, 350 S.C. 416, 422 (S.C. 2002). The exclusivity provision of the Act is jurisdictional and bars all common law actions against an employer where an employee's personal injury comes within the scope of the Act. S.C. Code Ann. §§ 42-1-10, 42-1-540, 42-1-160; *Sturgis v. Safe Passage, Inc.*, Civil Action No. 2000-CP-46-1092, 18 IER Cases 1170, 1172 (S.C. Com. Pl. 2002) (holding that exclusivity under the Act divests the court of subject matter jurisdiction).

The South Carolina Supreme Court has specifically held that a "claim of negligence for failure to exercise reasonable care in selection, retention, and supervision of co-employee[s] is covered by the [Workers' Compensation] Act." *Sabb,* 350 S.C. at 422. *See also*

Stokes v. First Nat'l Bank, 306 S.C. 46 (S.C. 1991) (mental injury arising from non-physical stress is within the Act). Claims for intentional infliction of emotional distress are similarly barred by the Act. *See Dickert v. Metro. Life Ins. Co.*, 311 S.C. 218 (S.C. 1993); *Loges v. Mack Trucks, Inc.*, 308 S.C. 134, 137 (S.C. 1992) (dismissing claim for intentional infliction of emotional distress stemming from harassment by co-employee). *See also Powell v. Vulcan Materials Co.*, 299 S.C. 325 (S.C. 1989) (recognizing that there is no justification for distinguishing between mental disorders resulting from physical injuries and mental disorders brought about by emotional stimuli or stressors which are incident to unusual and extraordinary conditions in employment). Notably, all the complained-of tortious conduct, purportedly committed by Rooskens, is alleged to have occurred within "the course and scope of his employment." (Am. Compl. ¶ 13.) As such, Plaintiff's First, Second and Nineteenth Causes of Action are barred by the Act's exclusivity provision and must be dismissed.

2. <u>Several of Plaintiff's Claims Are Time-Barred.</u>

Plaintiff filed his initial Complaint in this case on July 18, 2014. Because the causes of action asserted in Plaintiff's First Amended Complaint are the same as those asserted in his initial Complaint, the claims asserted in the First Amended Complaint relate back to July 18, 2014, the date on which the initial Complaint was filed. S.C. R. Civ. P. 15(c). Because the allegations Plaintiff sets forth in support of his Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Fifteenth Causes of Action demonstrate on their face that these claims are time-barred, these causes of action must be dismissed with prejudice. Plaintiff's Twelfth Cause of Action for Violation of the Payment of Wages Act is also time-barred to the extent it seeks relief for actions that allegedly occurred prior to July 18, 2011.

In support of his Third, Fifth, and Seventh Causes of Action, Plaintiff alleges that Brothers engaged in fraudulent conduct on February 19, 2010, December 27, 2010, and December 2010 through January 2011, respectively. (Am. Compl. ¶¶ 144-54; 161-68; 174-79.) There can be no dispute that these claims are beyond South Carolina's three-year statute of limitations for fraud claims. *See* S.C. Code Ann. § 15-3-530(5); *Graham v. Welch*, 404 S.C. 235 (S.C. Ct. App. 2013). As such, these claims must be dismissed.

Similarly, Plaintiff alleges in his Fourth and Eighth Causes of Action that in 2010 Brothers breached a fiduciary duty owed to him. (Am. Compl. ¶¶ 155-60; 180-85.) These claims are clearly beyond South Carolina's three-year statute of limitations for breach of fiduciary duty claims and must be dismissed as a matter of law. *See* S.C. Code Ann. § 15-3-530(5); *Graham*, 404 S.C. at 235.

In support of his Sixth Cause of Action, Plaintiff alleges that in 2010, he entered into an oral contract with Brothers. (Am. Compl. ¶ 170.) Plaintiff claims that Brothers breached this oral contract in 2011. (*Id.* at ¶ 172.) Because South Carolina's statute of limitations for breach of contract claims is three years, *see* S.C. Code Ann. § 15-3-530(1), this claim is time-barred and must be dismissed.

Plaintiff alleges in support of his Fifteenth Cause of Action that Brothers defamed him between June 13 and June 17, 2012. (Am. Compl. ¶ 233.) South Carolina's statute of limitations for defamation claims is two years. S.C. Code Ann. § 15-3-550; *Jones v. City of Folly Beach*, 326 S.C. 360, 368 (S.C. Ct. App. 1997); *Evans v. Rite Aid Corp.*, 317 S.C. 154, 158 n.3 (S.C. Ct. App. 1994). Accordingly, this claim fails as a matter of law and must be dismissed.

Finally, in his Twelfth Cause of Action, Plaintiff alleges that Brothers violated the Payment of Wages Act by, among other alleged actions: (1) failing in 2010 to pay him the

"considerable bonus" he was promised; and (2) failing to pay him a salary of $65,000 beginning in January 2011 according to the terms of the alleged oral contract between the parties. (Am. Compl. ¶ 215-16.) The statute of limitations for violations of the Payment of Wages Act is three years. S.C. Code Ann. § 41-10-80. Therefore, Plaintiff's Twelfth Cause of Action must be dismissed to the extent he seeks recovery for alleged violations that occurred prior to July 18, 2011.

3. Plaintiff's Breach of Contract Claim Based on His Termination Fails as a Matter of Law.

Plaintiff has failed to allege facts that could plausibly show that he was employed on a basis that was anything other than at-will, and therefore his Eighteenth Cause of Action must be dismissed. South Carolina strictly adheres to the employment-at-will doctrine, which provides that an at-will employee may be terminated "at any time, for any reason or for no reason at all." *Small v. Springs Indus., Inc.*, 300 S.C. 481, 484 (S.C. 1990). "In South Carolina, employment at-will is presumed absent the creation of a specific contract of employment. An at-will employee may be terminated at any time for any reason or for no reason, with or without cause." *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 614 (S.C. 2011) (citing *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 310 (S.C. 2010)). An employee without a contract for a stated period of time is presumptively considered an at-will employee. *Cape v. Greenville Cnty. Sch. Dist.*, 365 S.C. 316, 319 (S.C. 2005). "The termination of an at-will employee normally does not give rise to a cause of action for breach of contract." *Prescott v. Farmers Tel. Co-op.*, 335 S.C. 330, 334-35 (S.C. 1999). Moreover, it is axiomatic that a party must plead each of the elements of the allegedly breached contract before he may recover for breach of contract. *Rabon v. State Fin. Corp.*, 203 S.C. 183, 185 (S.C. 1943). "The necessary elements of a contract are an offer, acceptance, and valuable consideration." *Roberts v. Gaskins*, 327 S.C. 478, 483 (S.C. Ct.

App. 1997) (citing *Carolina Amusement Co. v. Conn. Nat. Life Ins. Co.*, 313 S.C. 215 (S.C. Ct. App. 1993)).

Plaintiff's allegations do not overcome the presumption of at-will employment. Here, Plaintiff has not alleged that his employment was limited in duration, nor are there any allegations that support the limitation of the Brothers' right to terminate Plaintiff's employment. In particular, there is nothing contained in the disciplinary action notice issued to Plaintiff that limits Brothers' right to terminate Plaintiff's employment for other reasons, despite Plaintiff's conclusory assertions to the contrary. As Plaintiff has not set forth a facially-plausible claim that the parties entered into a contract that would alter the presumption of at-will employment, Plaintiff's breach of contract claim premised upon his termination cannot proceed. Moreover, Plaintiff offers nothing more than conclusory statements that "Plaintiff was issued a valid and enforceable express unilateral employment contract" on January 20, 2012 to establish that a contract between the parties existed. (Am. Compl. ¶ 263.) Plaintiff fails to plead any of the material elements of the purported employment contract upon which he is suing, as required by South Carolina law. *See Rabon*, 203 S.C. at 185. Accordingly, Plaintiff's Eighteenth Cause of Action cannot be sustained.

4. <u>Plaintiff Cannot Maintain His Claim for Violation of the Payment of Wages Act.</u>

To the extent that Plaintiff's Twelfth Cause of Action for Violation of the Payment of Wages Act is not time-barred, as discussed *supra* at 4, this claim fails as a matter of law. The Payment of Wages Act permits Plaintiff to recover in a civil action "all wages due" but unpaid by Brothers. S.C. Code Ann. § 41-10-50 (Supp. 2012); S.C. Code Ann. § 41-10-80(C) (Supp. 2012). The Payment of Wages Act defines "wages" as follows:

> [A]ll amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or

> commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee under any employer policy or employment contract. Funds placed in pension plans or profit sharing plans are not wages subject to this chapter.

S.C. Code Ann. § 41-10-10(2) (Supp. 2012). In other words, the Payment of Wages Act "defines 'wages' as 'all amounts . . . which are due to an employee under any . . . **employer policy or employment contract.**'" *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 195 n.4 (S.C. Ct. App. 1995) (quoting § 41-10-10(2)) (emphasis added). Accordingly, in order to state a claim under the Payment of Wages Act, Plaintiff must show the existence of a valid employer policy or contract, and the wages sought must be "due" under the terms of that policy or contract.

In this case, there are no allegations to support Plaintiff's assertion that Brothers withheld any bonus compensation from him in contravention of an employer policy or employment contract. Indeed, Plaintiff does not allege that he was promised a bonus in 2011. (Am. Compl. ¶ 26). Rather, he alleges only that there was a "legitimate expectation" that he "would be provided with year-end bonuses," and claims that the $3,750 bonus he received was not "determined in accordance with the factors represented to Plaintiff." (Am. Compl. ¶¶ 24, 216.) According to the First Amended Complaint, bonuses were to be determined based upon the relative success of Brothers' business with consideration for the employee's position with Brothers. (*Id.* ¶ 24.) Absolutely nothing about the "factors" presented to Plaintiff suggests that any bonus that was discussed with Plaintiff was anything other than a discretionary bonus, which clearly falls outside the scope of the Payment of Wages Act. As Plaintiff has not pled the material elements of a contract, or identified any non-discretionary policy entitling him to a bonus at the end of 2011 (or at any other point in his employment), he cannot state a claim for relief under the Payment of Wages Act.

Finally, to the extent Plaintiff's Twelfth Cause of Action seeks recovery for a violation of the notice requirements of the Payment of Wages Act, a review of the statutory text makes clear that such a claim is untenable. The Payment of Wages Act explicitly provides that enforcement of its notice provisions are the exclusive province of the South Carolina Department of Labor, Licensing, and Regulation. *See* S.C. Code Ann. § 41-10-80(A); (D). The only provision setting forth a private right of action is S.C. Code Ann. § 41-10-80(C), which does not permit the recovery of penalties, and is expressly limited to recovery for certain violations of §§ 41-10-40 and 41-10-50. Permitting a private party to collect damages for notice violations in a civil action without any of the administrative review procedures set forth in the Payment of Wages Act would contravene the intent of the Legislature as plainly set forth in the statute. *Paschal v. State Election Comm'n*, 317 S.C. 434, 436 (S.C. 1995) ("If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.") (citing *Miller v. Doe*, 312 S.C. 444, 447 (S.C. 1994)). Accordingly, Plaintiff has not stated (and cannot state) a valid claim for relief for the alleged violation of the notice requirements of the Payment of Wages Act. Therefore, Plaintiff's Twelfth Cause of Action must be dismissed.

5. <u>Plaintiff's Cause of Action for Intentional Interference with Contractual Relations Cannot Be Sustained.</u>

Plaintiff's Sixteenth Cause of Action for Intentional Interference with Contractual Relations is premised on Plaintiff's legally untenable argument that Brothers interfered with its own contract. To prevail on this claim, Plaintiff must prove: (1) the existence of a contract; (2) Brothers' knowledge of the contract; (3) Brothers' intentional procurement of the contract's breach; (4) absence of justification; and (5) damages resulting therefrom. *DeBerry v. McCain*,

275 S.C. 569, 574 (S.C. 1981) (setting forth elements of tortious interference with contractual relations). *See also Collins Entm't Corp. v. Coats & Coats Rental Amusement*, 368 S.C. 410, 420-21 n.1 (S.C. 2006) (Toal, C.J., dissenting) (explaining that a cause of action for "intentional interference with contract" requires proof of the same elements as a cause of action for tortious interference with contractual relations). Even if Plaintiff could show the existence of a contract, it is axiomatic that Brothers cannot interfere with their own contract. *See McManus v. MCI Commc'ns Corp.*, 748 A.2d 949, 958 (D.C. 2000) ("[A]n employer cannot interfere with its own contract."). Plaintiff alleges that Brothers are parties to the employment contract upon which his Sixteenth Cause of Action is based. (Am. Compl. ¶¶ 243-251.) As such, Brothers cannot interfere with its own contract, and this cause of action must be dismissed.

6. Plaintiff's Quantum Meruit Claim Fails As a Matter of Law.

Quantum meruit is an equitable doctrine that allows recovery for unjust enrichment. *Columbia Wholesale Co. v. Scudder May N.V.*, 312 S.C. 259, 261 (S.C. 1994). To recover under this theory, Plaintiff must establish: "(1) benefit conferred by [the] plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying it value." *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 8-9 (S.C. 2000). Plaintiff rests his claim upon his allegation that Brothers were unjustly enriched when they failed to "pay the fair or equitable value for the services performed by Plaintiff." (Am. Compl. ¶ 224.) Plaintiff, however, cannot establish any "unjust enrichment" by Brothers resulting from his mere performance of his job duties. Here, it is undisputed that throughout his at-will employment, Plaintiff earned and was paid a salary. Moreover, Plaintiff readily acknowledges that he received a bonus at the end of 2010 and 2011. (*Id.* ¶¶ 35, 75.) Thus, Brothers were not unjustly enriched

by Plaintiff's provision of his services. As Plaintiff has not alleged that he conferred any benefit on Brothers for which he was not compensated, his Thirteenth Cause of Action for Quantum Meruit fails as a matter of law.

7. **Plaintiff's Breach of Fiduciary Duty Claims Fail As a Matter of Law.**

Plaintiff has alleged four separate claims for breach of fiduciary duty against Brothers stemming from four discrete events that occurred during his employment. Specifically, Plaintiff challenges the following:

- **FOURTH CAUSE OF ACTION**: Rooskens' actions surrounding the year-end bonus he received in December 2010 (Am. Compl. ¶¶ 155-160);
- **EIGHTH CAUSE OF ACTION**: Rooskens' alleged repudiation of his "oral employment contract" in December 2010 (Am. Compl. ¶¶180 – 185);
- **NINTH CAUSE OF ACTION:** Rooskens' actions surrounding the year-end bonus he received in December 2011 (Am. Compl. ¶¶ 186-191); and
- **FOURTEENTH CAUSE OF ACTION**: Rooskens' efforts to secure the termination of his employment between June 13, 2012 and June 17, 2012 (Am. Compl. ¶¶ 226-231).

As discussed *supra*, Plaintiff's Fourth and Eighth causes of action are time-barred. In addition, Plaintiff has failed to plead that he and Brothers entered into a confidential relationship, and therefore his Ninth and Fourteenth causes of action also fail as a matter of law.[2]

"A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." *Moore v. Benson*, 390 S.C. 153, 163 (S.C. Ct. App. 2010). That "special confidence" simply does not exist in the employer–employee relationship.

[2] As discussed *supra* at 3-4, Plaintiff's Fourth and Eighth Causes of Action are also time-barred.

Plaintiff alleges in conclusory fashion that he and Rooskens owed fiduciary duties to Brothers, and because each of them owed fiduciary duties to Brothers, they also owed fiduciary duties to each other. (Am. Compl. ¶ 18.) In essence, Plaintiff contends that if two employees of a common employer each owe a fiduciary duty to the employer, then those coworkers automatically owe a fiduciary duty to each other personally. There is simply no basis for the position that Plaintiff and/or Rooskens owed a fiduciary duty to Brothers by virtue of their employment. Moreover, the Court is unaware of any authority that would support the imposition of a fiduciary duty between two employees simply because they are employed by a common employer. Such a result contravenes the very concept of fiduciaries and must be rejected.

Moreover, as discussed *supra*, Plaintiff was an at-will employee. It is well settled that at-will employment is generally terminable by either party at any time, for any reason, or for no reason at all. *See Johnson v. First Carolina Fin. Corp.*, 305 S.C. 556, 559 (S.C. Ct. App. 1991). To hold that a fiduciary relationship existed between Brothers and its at-will employee would be inconsistent with the concepts of the fiduciary duty and employment at-will; after all, an employer cannot terminate an employee for no reason, yet simultaneously act "with due regard to the interests" of the employee. *See Moore*, 390 S.C. at 163. Plaintiff has failed to plead facts that could plausibly show that a fiduciary relationship existed between Brothers and him. As a result, Plaintiff's Ninth and Fourteenth causes of action must be dismissed.

8. <u>Plaintiff Has Failed to Plead Facts Sufficient to Sustain His Fraud Claims.</u>

Plaintiff has alleged several fraud-based causes of action. As discussed *supra*, Plaintiff's Third, Fifth, and Seventh causes of action are time barred. Plaintiff's Tenth and Eleventh causes of action also fail as a matter of law. Specifically, Plaintiff's Tenth, and Eleventh Causes of Action are based on Plaintiff's claim that Rooskens fraudulently concealed

material information concerning employee bonuses. (*Id.* at ¶¶192-211.) The primary basis for these claims is Rooskens' allegedly made repeated misrepresentations to Plaintiff in an effort to induce Plaintiff's performance or to serve his own personal financial interests. Notably, Plaintiff makes no factual allegations against Brothers in support of any of these claims. Rather, Plaintiff seeks to hold Brothers liable for Rooskens' alleged fraudulent acts. As discussed below, each of these claims fails as a matter of law.

a. Plaintiff Has Not Alleged Facts Sufficient To State All The Elements of His Fraud Claims.

In the instant case, even if Plaintiff's allegations are accepted as true, the First Amended Complaint does not contain factual allegations that could plausibly entitle him to relief for any of his fraud-based causes of action. Rule 9(b) of the South Carolina Rules of Civil Procedure requires that a party state with particularity the circumstances constituting fraud. Under South Carolina law, "[f]raud is an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right." *Regions Bank v. Schmauch*, 354 S.C. 648, 672 (S.C. Ct. App. 2003). A plaintiff asserting a fraud claim must allege specific facts that could plausibly establish the following nine distinct elements: (1) a representation; (2) falsity of the representation; (3) materiality of the representation; (4) either knowledge of the falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury as a result of the reliance. *Id.*

Plaintiff's First Amended Complaint lacks any factual allegations necessary to establish many of the elements of fraud under South Carolina law. For example, Plaintiff does not allege facts showing that any representation was made by Rooskens to Plaintiff with

knowledge of the falsity or a reckless disregard of its truth. Similarly, there are no facts showing that anyone intended for Plaintiff to act upon the alleged representations or that Plaintiff in fact relied upon the alleged representations to his detriment. In fact, the First Amended Complaint suggests that Plaintiff did not rely on any of Rooskens representations concerning his bonuses as demonstrated by Plaintiff's repeated objections regarding these bonuses throughout his employment. (*See, e.g.,* Am. Compl. ¶¶ 38-39.) In sum, Plaintiff has failed to plead facts to establish any of his fraud claims against Brothers. Thus, his Tenth and Eleventh Causes of Action must be dismissed with prejudice.

b. There Is No Fiduciary Relationship To Support Fraudulent Concealment.

Even if Plaintiff met the threshold pleading standard with respect to his fraud claims, his Tenth, and Eleventh Causes of Action for Fraudulent Concealment must be dismissed. "Non-disclosure becomes fraudulent concealment only when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction." *Lawson v. Citizens & S. Nat'l Bank of S.C.*, 259 S.C. 477, 481-82 (S.C. 1972). Accordingly, a plaintiff asserting a claim for fraudulent concealment must demonstrate that a fiduciary relationship existed between the party who allegedly concealed the information at issue and the plaintiff. *See, e.g., Pitts v. Jackson Nat'l Life Ins. Co.*, 352 S.C. 319, 335 (S.C. Ct. App. 2002). As discussed *supra*, the existence of an employment relationship, standing alone, does not constitute a fiduciary relationship. Because Plaintiff does not allege that Brothers owed him a fiduciary duty and Plaintiff's theory that he and Mr. Rooskens owed fiduciary duties to each other has no legal support, Plaintiff's Tenth and Eleventh Causes of Action for fraudulent concealment cannot proceed.

9. Plaintiff's Wrongful Discharge in Violation of Public Policy Claim Is Fatally Flawed.

As discussed *supra*, South Carolina recognizes the doctrine of employment at-will. *See, e.g., Prescott*, 335 S.C. at 330. The South Carolina Supreme Court has created certain narrow exceptions to the at-will employment doctrine, including an exception when the discharge of an employee violates "a clear mandate of public policy." *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 225 (S.C. 1985). "The determination of what constitutes public policy is a question of law for the courts to decide." *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 617 (S.C. 2011).

The Court finds the South Carolina Supreme Court's decision in *Barron*, 393 S.C. at 609, particularly persuasive. In *Barron*, the plaintiff complained internally to her employer that she was not being paid all wages that were due to her based on her agreement with her employer, which she alleged was a violation of the South Carolina Payment of Wages Act. *Id.* at 612. However, there was no evidence that the plaintiff filed a complaint with an outside government agency or threatened to do so. *Id.* at 618. The plaintiff was terminated eight or nine days after making her internal complaint, and subsequently filed a lawsuit against her employer in which she asserted a cause of action for wrongful termination in violation of public policy. *Id.* at 613.

The South Carolina Supreme Court affirmed the trial court's grant of summary judgment in favor of the employer. *Id.* at 618. While the court did not foreclose the possibility that a claim for wrongful termination in violation of public policy may exist when an employee is terminated for instituting a claim with an external government agency, there was no violation in *Barron* because the plaintiff only complained internally to management. *Id.*

Here, Plaintiff claims that he was terminated for his:

> [C]ontinued complaints of, opposition to, and efforts to prevent Rooskens' repeated disregard for Plaintiff's duties and obligations

> as Controller for Defendant CHRM for the purpose of engaging in fraudulent and oppressive pay practices, and other improprieties, and further, in protection of Rooskens' personal interests . . . for the purpose of procuring improper personal financial gains.

(Am. Compl. ¶ 257.) Plaintiff identifies S.C. Code Ann. § 41-10-10 and 41-1-110 as the source of the clear mandate of public policy upon which his wrongful termination claim is based. Plaintiff lists a number of internal complaints made to Rooskens throughout his employment upon which he bases his claim. (*See, e.g.*, Am. Compl. ¶ 82 (complaint regarding a deduction taken from an employees' bonus check); ¶ 84 (complaint disputing disciplinary action taken against Plaintiff); ¶ 105 (complaints about numerous perceived slights that occurred in the workplace). Notably, each of these complaints was made internally, and according to Plaintiff's allegations, he never addressed his concerns with anyone other than Rooskens. There is no basis for extending the narrow public policy exception to at-will employment to the instant situation, where an employee alleges only that he made internal complaints stemming from numerous disagreements with a co-worker. *See Barron*, 393 S.C. at 617-18. Accordingly, Plaintiff's Seventeenth Cause of Action must be dismissed.

WHEREFORE, for the foregoing reasons, this Court hereby grants Defendants' Motion to Dismiss and dismisses Plaintiff's First Amended Complaint in its entirety with prejudice.

IT IS SO ORDERED

The Honorable Roger L. Couch

August 17, 2015