

State of South Carolina
County of Spartanburg

) IN THE COURT OF COMMON PLEAS
)
) 2014-CP-42-01759

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SC Court of Appeals

Denise Parker,

Plaintiff,

v.

The National Honorary Beta Club,

Defendant.

) Order Denying Defendant's Motion
) JNOV or New Trial and Dismissing
) Plaintiff's Promissory Estoppel Claim

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I. Procedural Background

Plaintiff commenced this action on April 29, 2014. Plaintiff initially brought two claims: Count I for breach of contract and Count II for promissory estoppel. During the course of discovery, Plaintiff amended the complaint with the consent of Defendant.

Plaintiff's Amended Complaint sets forth three claims: Count I for breach of contract; Count II for breach of contract accompanied by fraudulent act; and Count III for promissory estoppel.

This matter came to trial on September 28, 2015. The jury heard evidence on September 28, September 30, and October 1st. The parties presented closing argument on October 2nd, and the jury deliberated and returned a unanimous verdict that same day.

The jury found for Plaintiff on both Count I (breach of contract) and Count II (breach of contract accompanied by fraudulent act). The jury awarded actual damages of Five Hundred Eighteen Thousand Six Dollars (\$518,006) and punitive damages of

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Three Hundred Fifty Thousand Dollars (\$350,000).¹ The Court took Count III (promissory estoppel) under advisement as Defendant insisted that it be tried by the Court because the action arises in equity. The Court entered Judgment in the amount of Eight Hundred Sixty-Eight Thousand Six Dollars (\$868,006) as of October 2, 2015.

By agreement of the parties, the Court extended the deadline for submission of post-trial Motions by ten days.

On October 12, 2015, Defendant timely filed its Motion for judgment notwithstanding the verdict (JNOV) and for a New Trial. Defendant raises three arguments as to why it is entitled to judgment as a matter of law (Motion ¶¶ A(1)-(2)), as well as arguments for a new trial absolute under the thirteenth juror doctrine (*id.* ¶ B(1)) and for new trial nisi remittitur (*id.* ¶ B(1)).

Now before the Court are Defendant's Motion JNOV or for New Trial as well as Count III for promissory estoppel. For the reasons that follow, Defendant's Motion is DENIED and Plaintiff's claim for promissory estoppel is DISMISSED.

II. Summary of Evidence Presented

For purposes of background, the Court briefly describes the evidence presented at trial.

Defendant employed Plaintiff for approximately thirty-eight years. In 2013, Bob Bright became executive director of Defendant. By all accounts, there were morale issues in the office after Bright became executive director. The parties disagree, however, as to both the cause or source of the issues and the substance of them.

¹ The jury listed the actual damages under both counts. The Court instructed the jury, as the parties agreed, that actual damages would be awarded only one time to avoid any double recovery.

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Plaintiff was selected by the other coworkers to serve on the staff liaison committee ("SLC"). The purposes of the SLC were to address employee concerns at work, to serve as a liaison with management, and to meet with the Internal Affairs Committee of Defendant's Board of Directors ("IAC").²

In September, 2013, the SLC met with employees, and then with Bright. The SLC was addressing issues, including divisions within the staff and morale, which it discussed with Bright.

On October 25, the SLC was scheduled to meet with the IAC in conjunction with the Board's regularly-scheduled meeting. Bright knew that the meeting would occur and knew of Plaintiff's role on the SLC.

On October 21, Bright issued Plaintiff a written reprimand – the first she ever received in her 38-year career. The reprimand lists three areas of concern: (1) Failure to sustain a professional growth strategy; (2) Does not demonstrate an exceptional mastery of professional skills; and (3) Professional manner in which coworkers are addressed. The sum and substance of the warnings relates to purported complaints that two convention coordinators made about Plaintiff related to issues about which the parties presented competing and conflicting evidence.

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² Article 1, Section 1(A) of the Beta Club Constitution provides that Defendant is governed by a National Board of Directors. Article 1, Section 1(K) states: "[t]he National Board shall set up such organizational committees as shall be necessary for the proper supervision and direction of the affairs of the organization." Pursuant this provision, Defendant established an Internal Affairs Committee. Under the policies adopted by the Board, the Internal Affairs Committee is charged with gathering information, "[m]eeting with staff to receive staff input concerning daily operations," "[m]eeting with the Staff Liaison Committee about suggestions and concerns for improving the National Beta Club," and other duties to learn about and deal with internal issues.

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Plaintiff testified that, during the meeting, Bright made a comment about how he could have people lined up on the sidewalk to fill Plaintiff's job, which Plaintiff testified as leaving her fearful of termination.

It is undisputed that nobody expressed any concerns about Plaintiff between the time of her warning on October 21 and the SLC-IAC meeting on October 25.

The IAC-SLC meeting occurred in the context of employee concern about job security morale in the office. One of the IAC Committee members was Dr. Ken Dinkins -- vice chair of the Board, chair of the South Carolina council, and a prior Board Liaison and member of several committees. At the meeting with Dr. Dinkins were other members of the IAC, who also were high-ranking officers of the Board. Pat Stout was Board chair (*Id.* at 34:22 – 35:4). Dennis Campbell was chair of the IAC, board liaison, and vice chair of the Board at the time. Board members Stan Long and Mark Conley also were present.

Plaintiff would not volunteer any information about what Bright had done to her out of fear of her job. Another SLC member, Pat Mabry, told the members of the Board that they needed to ask Plaintiff what happened when she had her employee conference with Bob Bright on October 21st, 2013. Mabry advised that Plaintiff would not volunteer the information. Dr. Dinkins confirmed that Plaintiff was reluctant to speak about her situation and appeared to be fearful.

The parties do not dispute that, at the meeting and in the presence of the other Board members, Dr. Dinkins told Plaintiff that she was required to answer their

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questions about what happened. Through Dr. Dinkins, the IAC assured Plaintiff that Bright could not fire her for answering their questions.³

Plaintiff finally told the Board members about her write up and Bright's comments about people waiting in line for her job. Plaintiff also told the Board how Bright accused her of not helping Barbara Anderson (another member of the Committee in attendance), but that Anderson had no problem with Plaintiff helping her.⁴ Dr. Dinkins confirmed that there is no reason to believe Plaintiff provided any information that was not true.

Dr. Dinkins testified that the IAC met with Bright after the meeting with Plaintiff and the SLC. Bright denied that the IAC specifically informed him about Plaintiff's comments. Dr. Dinkins confirmed, however, that he did discuss fears of job security held by employees, as well as concerns about the manner in which discipline was handled. There was no evidence in the record of other employees being disciplined or in fear of their jobs. Bright acknowledged that, during the meeting, he discussed the possibility of terminating Plaintiff's employment.

Defendant does not contend there were any problems with Plaintiff the rest of that day (October 25). The next week (October 28 – November 1), Bright was out of town. Nobody testified that they had any concerns about Plaintiff that week and nobody informed Bright that there were any issues with Plaintiff.

The following Monday, November 4, Bright returned to work. He called Plaintiff into the office. Present were Plaintiff, Bright, and Laura Lewis. The parties dispute

³ Dinkins, in fact, testified that Bright did not have the authority to fire Plaintiff for answering the IAC's questions.

⁴ Plaintiff testified that Bright accused her of not helping a manager, Barbara Anderson. Anderson, however, denied to Plaintiff knowing anything about it when Plaintiff asked her what the issue was about.

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what was said during the meeting. Plaintiff testified that Bright told her "I heard you were negative with the Board," and that he was terminating her employment. Bright and Lewis deny that Bright said that he heard Plaintiff was negative with the Board. Bright presented another document, however, that documented a purported concern about "continued negativity."

The November 4 document Bright presented also cited "communication and failure to respond to emails promptly." Defendant did not present any emails to which Plaintiff did not respond. Bright testify he received numbers of emails sent and received from employees and based the alleged failure to respond to the difference in the numbers. Bright acknowledged, however, that the statistics did not actually show that any sent emails related to any received emails. Plaintiff's supervisor at the time informed Bright that Plaintiff was receiving spam emails and UPS notices. Defendant's information technology (IT) head, Jay Moore, also told Bright that some of the emails may be spam. None of the witnesses identified a situation in which Plaintiff did not respond to their emails. As discussed above, there were no complaints from Garland Meyer, or anyone else about Plaintiff being negative since Bright's prior warning.

In discovery responses, Bright stated that the bases for terminating Plaintiff's employment included her "fail[ure] to keep up with advances in computer programs to allow her to perform necessary job functions," that she was "resistant to change and to embrace new ideas," and that she "fail[ed] to keep up her technical skills." In addition to her own testimony, Plaintiff offered testimony from others, including both her supervisor at the time and Moore, to the effect that Plaintiff was adept at operating the technology

at work, and neither Bright nor any other witness for Defendant offered testimony that she was deficient in these areas.

II. Defendant's Motion JNOV

A. Standard

Because Plaintiff prevailed before the Jury, the issue before the Court is not whether Defendant has provided evidence that could support a verdict in its favor. To the contrary, a motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. *Gause v. Smithers*, 403 S.C. 140, 149, 742 S.E.2d 644, 649 (2013). "[T]he trial judge is concerned with the existence of evidence, not its weight." *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). The trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion. The trial court must deny the motion when the evidence yields more than one inference or its inference is in doubt. *V.E. Amick & Associates, LLC v. Palmetto Environmental Group, Inc.*, 394 S.C. 538, 546, 716 S.E.2d 295, 299 (Ct. App. 2011).

When considering a motion for JNOV, the trial judge cannot disturb the factual findings of a jury unless a review of the record discloses no evidence which reasonably supports them. *Force v. Richland Memorial Hospital*, 322 S.C. 283, 471 S.E.2d 714, 715 (Ct.App. 1996).

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B. Discussion

1. Count I: Breach of Contract

a. Sufficiency of the promise

Defendant's first argument as to Count I is that "the alleged promise in this case

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does not constitute an enforceable contract." Motion ¶ A(1). Defendant is correct that cases such as *Prescott v. Farmers Tel. Coop., Inc.*, 335 S.C. 330, 516 S.E.2d 923 (1999) stand for the proposition that vague assurances of job security, especially if remote to the issue related to the termination, cannot be enforced in contract.

For example, in *Prescott*, the Plaintiff testified that, approximately twenty years prior to his termination, supervisors told him "as long as you do your job, keep your nose clean, that you'd have a job at Farmers Telephone right on." *Prescott*, 335 S.C. at 333, 516 S.E.2d at 924. In *Davis v. Orangeburg-Calhoun Law Enft Comm'n*, 344 S.C. 240, 542 S.E.2d 755 (Ct. App. 2001) the Court of Appeals held that a statement that the employee would "only be terminated for cause" was "not definite enough to alter his at-will status." *Id.* at 249, 542 S.E.2d at 760.

Cases such as *Prescott* and *Davis* stand for the proposition that colloquial terms about "clean noses" or "just cause" are far too indefinable to evidence any intent to be bound. They provide no measurable standard for determining whether, for example, an employee's conduct meets the standard of keeping his or her "nose clean," or whether grounds for termination are "just." As such, they lack the definiteness required to establish an enforceable promise.

Plaintiff is not relying on any vague promise made long before the facts at issue. Rather, she presented uncontroverted evidence that the IAC made a very specific promise to her, which was limited solely to one basis for which she would not be terminated. Not only is there no ambiguity as to the terms of the promise, the fact it was made is not in dispute. In short, it was a specific promise, made to one specific person that was limited to one specific circumstance.

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Plaintiff also produced ample evidence that Defendant intended for the promise to be binding. Dr. Dinkins well understood that Plaintiff was not going to answer questions unless the IAC provided assurances of job protection. There simply is no evidence that Dr. Dinkins did not mean what he said on behalf of the Board/Committee. However, for purposes of this Motion, it is enough that there is some evidence to support the notion that he did.

b. Evidence of a breach

Defendant's second argument is that "Plaintiff failed to present any evidence of a breach." Motion ¶ A(2). Although the parties dispute what was said in the termination meeting, Plaintiff testified that Bright informed her that the reason for her termination was that she was negative with the Board. It was for the jury to determine whether to credit Plaintiff's version or that of Defendant's witnesses.

Although the jury was free to rely solely on Plaintiff's testimony, there is other evidence upon which the jury may have relied. For example, "negativity" was specifically listed by Bright on the November 4 document presented at the termination meeting. Although Bright testified that his "continued negativity" comment related solely to negativity towards coworkers (and not the Board), this assertion is based on Bright's repeated insistence that he observed no improvement in Plaintiff's attitude in the intervening week between the IAC meeting and the termination. The jury may have rejected this assertion, however, as Bright was not in the office at any intervening time. Moreover, as discussed above, all defense witnesses conceded there were no issues during that week and nobody complained to Bright about Plaintiff.

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Plaintiff used both Bright's and Lewis's depositions for impeachment purposes, and he did so numerous times in the case of Bright.⁵

Finally, as discussed above, there is conflicting evidence as to the veracity of the other reasons given over time by Bright for the decision to terminate Plaintiff. If the jury did not believe the other reasons offered by Bright for the termination, it could have concluded that Plaintiff's testimony was credible as to the reason she claims Bright gave.

In the end, it was for the jury to assess the credibility of the witnesses and this Court cannot disturb that decision under the standard for motions JNOV. "The assessment of witness credibility is within the exclusive province of the jury." *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012) (citing *State v. Wright*, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977)). "[T]he jury does not [even] have to believe uncontradicted testimony. *Vinson v. Hartley*, 324 S.C. 389, 409, 477 S.E.2d 715, 725 (Ct. App. 1996) (citing *Black v. Hodge*, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991)). Further, as our Supreme Court has recently noted, "neither an appellate court nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence." *Bass v. S.C. Dep't of Soc. Servs.* No. 27593, 2015 S.C. LEXIS 390, at *15-16 (Dec. 2, 2015) (citing *Garrett v. Locke*, 309 S.C. 94, 99, 419 S.E.2d 842, 845 (Ct. App. 1992)).

⁵ There were several other occasions on which the Court needed to instruct Bright to respond to the questions asked. Again, it was for the jury to determine from its own observation of demeanor and other factors charged what weight to accord witness testimony. As discussed above, the Court does not weigh such possible determinations or resolve credibility arguments. Rather, it confines itself to a review of what a reasonable jury could find.

c. Conclusion as to Count I

For the foregoing reasons, Defendant's Motion for Judgment Notwithstanding the Verdict as to Count I is DENIED.

2. Count II: Breach of Contract Accompanied By Fraudulent Act

Defendant's third argument is that "Defendant is entitled to judgment on Plaintiffs breach of contract accompanied by fraudulent act claim because Plaintiff failed to present evidence of an independent fraudulent act accompanying the alleged breach of contract." Motion ¶ A(3). Again, Defendant states a generally correct legal principle that this tort requires a fraudulent act that is distinct, yet related to the act constituting the breach of the contract. See *Smith v. Canal Ins. Co.*, 275 S.C. 256, 257, 269 S.E.2d 348, 349 (1980).

The fraudulent act can be "any act characterized by dishonesty in fact, [or] unfair dealing." *Harper v. Ethridge*, 348 S.E.2d 374, 290 S.C. 112 (Ct. App. 1986). "The fraudulent act may be prior to, contemporaneous with, or subsequent to the breach of contract, but it must be connected with the breach itself and cannot be too remote in either time or character." *Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 54, 336 S.E.2d 502, 504 (Ct. App. 1985).

"'Fraud,' in this sense, 'assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence.'" *Conner v. City of Forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002) (quoting *Sullivan v. Calhoun*, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921)).

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The breach in this case is the termination by Bright for being "negative with the Board," which contravenes the specific promise by the IAC that Plaintiff would not be terminated for providing it information.

The fraudulent act is not the termination itself. Rather, Plaintiff has contended throughout that the fraudulent acts upon which she relies are the pretextual reasons Bright gave at the time and subsequently for the termination.

The act of the termination and the giving of reasons are separate, distinct, and independent of each other. The former may exist without the latter. At the same time, they are related as they must be and the latter accompanies the former. *Conner*, 560 S.E.2d at 612 (recognizing that the fraudulent intent must "relat[e] to the breaching" and that the fraudulent act must "accompany[] the breach.").

Although the appellate courts have recognized that the facts and circumstances of each case will be unique, in this particular context, *Conner* clearly provides clear legal authority to support the jury's determination. In *Conner*, a police dispatcher alleged that her termination for job performance violated provisions in a handbook. After upholding the Court of Appeals' determination that it was for the jury to resolve disputed testimony regarding the termination, the Supreme Court provided guidance as to breach of contract accompanied by fraudulent act. Again, the Supreme Court determined that it was for the jury to resolve the matter. Although the plaintiff argued that there were several fraudulent acts in which the defendant engaged, the Supreme Court found one allegation sufficient to send the case to the jury. The Supreme Court noted: "Primarily . . . Conner's claim is that the City fabricated pretextual reasons for Conner's termination knowing the reasons were false and did not justify termination for cause." *Conner*, 348

S.C. at 466, 560 S.E.2d at 612). The Court held that conflicting testimony as to whether the reasons were false create "a genuine issue of material fact as to whether the City fraudulently breached its contract." *Id.*

As in *Conner*, the giving of allegedly-pretextual reasons for the termination is an act separate and distinct from the termination itself and yet it accompanied it. And, as in *Conner*, it was for the jury to resolve the disputed testimony on this point.

c. Conclusion as to Count II

For the foregoing reasons, Defendant's Motion for Judgment Notwithstanding the Verdict as to Count II is DENIED.

C. Conclusion

For the foregoing reasons, Defendant's Motion JNOV is DENIED.

III. Defendant's Motion for New Trial

As noted above, Defendant has moved for both New Trial Absolute and for New Trial Nisi Remittitur

A. Standard

1. New Trial Absolute

The trial court must grant a new trial absolute if the verdict is so grossly excessive that it shocks the conscience of the court and clearly indicates the amount of the verdict was the result of caprice, passion, prejudice, partiality, corruption, or other improper motive. Alternatively, the trial court may grant a new trial absolute when, sitting as the thirteenth juror, it concludes the jury's verdict is not supported by the evidence. Under the Thirteenth Juror Doctrine in South Carolina, circuit court judges have the authority to grant a new trial upon the judge's finding that justice has not

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prevailed. *Youmans v. S.C. DOT*, 380 S.C. 263, 272-73, 670 S.E.2d 1, 5 (Ct. App. 2008) (citing *Todd v. Owen Indus. Prods., Inc.*, 315 S.C. 34, 431 S.E.2d 596 (Ct. App. 1993)). The thirteenth juror doctrine permits a court to essentially hang the jury "solely 'upon the facts.'" *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002) (emphasis added, quoting *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990)); *Howard v. Roberson*, 376 S.C. 143, 153, 654 S.E.2d 877, 882 (Ct. App. 2007) ("The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case.") (citing *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984)).

However, the jury's determination of damages is entitled to substantial deference. On appeal, the appellate court reviews a denial of a new trial motion for an abuse of discretion. The appellate court will not reverse the trial court's decision on a motion for new trial unless it is controlled by an error of law or is not supported by the evidence. *Duncan v. Hampton County School Dist. No. 2*, 335 S.C. 535, 517 S.E.2d 449, 455 (Ct. App. 1999).

2. Nisi Remittitur

When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice. *Holroyd v. Requa*, 361 S.C. 43, 603 S.E.2d 417 (Ct. App. 2004). "If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge

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must grant a new trial absolute." *Harrison v. Bevilacqua*, 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003). Otherwise, the trial court alone has the power to grant a new trial nisi when he finds the amount of the verdict to be merely inadequate or excessive. *Proctor v. Dep't of Health & Env'tl. Control*, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006) (citations omitted). "However, compelling reasons must be given to justify invading the jury's province by granting a new trial nisi remittitur." *Id.* "Great deference is given to the trial judge 'who heard the evidence and is more familiar with the evidentiary atmosphere at trial,' and who thus 'possesses a better-informed view of the damages than this Court.'" *Id.* (quoting *Vinson v. Hartley*, 324 S.C. 389, 405-06, 477 S.E.2d 715, 723 (Ct. App. 1996)).

B. Discussion

1. Defendant's new trial absolute

Defendant's first new trial argument is that "[t]his Court should set aside the jury's verdict in favor of a new trial absolute on the grounds that the jury's verdict is based on insufficient evidence and that improper arguments were presented to the jury in closing arguments." Motion ¶ B(1).

a. Sufficiency of evidence

Defendant's Memorandum submitted contemporaneously with the Motion references Defendant's JNOV arguments that Plaintiff offered insufficient evidence that, "(a) her at-will employment had been altered by an employment contract; (b) that Defendant had breached that contract; and (c) that Defendant committed an independent fraudulent act accompanying the allege breach." Memo in Support at 11.

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Defendant argues that such insufficiency warrants application of the thirteenth juror doctrine.

For the reasons set forth above, as it pertains to the facts in this case, the Court finds that Plaintiff submitted sufficient evidence of a specific promise that altered her at-will employment in one specific regard. Further, there was sufficient evidence that Defendant terminated Plaintiff for the very reason it promised her would not be used as grounds for termination. Finally, there was ample evidence that the reasons given by Bright for his decision are not true.

After a review of the record, the court finds that the verdict is supported by evidence in which a reasonable jury could have reached. The Court declines to exercise its discretion to hang the jury and order a new trial.

b. Closing argument

Defendant next argues that "the jury was exposed to improper argument in Plaintiff's closing statement in that Plaintiff's counsel presented argument to the jury that was unsupported by the record." Memorandum in Support of Motion at 11. Specifically, Defendant contends that it was improper to argue that Bright was sending a shot across the bow" in giving Plaintiff the warning of October 21 when the alleged contract had not been formed until the IAC/SLC meeting of October 25. *Id.*

Defendant did not preserve its argument regarding Plaintiff's closing arguments. "It is well settled that an issue may not be raised for the first time in a post-trial motion." *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007). To preserve an issue for review as to closing arguments, the complaining party must have made a contemporaneous objection. *State ex rel. Wilson v. Ortho-*

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Mcneil-Janssen Pharms., 2015 S.C. LEXIS 249, **26-27, 2015 WL 4112411 (S.C. July 8, 2015) (citations omitted); *Webb v. CSX Transp., Inc.*, 364 S.C. 639, 657, 615 S.E.2d 440, 450 (2005) (rejecting argument regarding improper closing argument: "Since there was no contemporaneous objection, this issue is not preserved for appellate review."); *Moore v. Florence School Dist. No. 1*, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994) ("[T]he record indicates no objection to counsel's argument to the jury regarding consent and this issue is not preserved for review"); *State v. Walker*, 366 S.C. 643, 660, 623 S.E.2d 122, 131 (Ct. App. 2005) ("Failure to object to comments made during [closing] argument precludes appellate review of the issue."). For this reason alone, Defendant's effort to seek a new trial must be rejected.

As a separate and independent basis for denying Defendant's Motion, the Court further finds that there was nothing improper about the argument. It is precisely the purpose of closing argument to argue the theories of the case and inferences a party proposes be drawn from the evidence. *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 244, 734 S.E.2d 148, 160 (2012) ("[A]n attorney is permitted to argue the evidence and its inferences in her closing argument") (Pleicones, J., concurring).

Whether the contract was formed before or after the warning is irrelevant to the point Plaintiff was making. Plaintiff's theory of the case was that Bright attempted to intimidate her going into the meeting, and that he was successful in doing so. Plaintiff's theory of the case also was that Bright's effort to intimidate her not only provides background as to the issues discussed in the case, but also provides the context as to why Plaintiff would not respond to IAC questions until Dr. Dinkins gave her the specific promise upon which she has relied.

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At trial, Defendant itself used the effects of the October 21 meeting to argue that Plaintiff knew she was on "thin ice" and was employed at will. Plaintiff's retort was that this was precisely Bright's intent and the reason for Dr. Dinkins' promise.

Even if Defendant preserved this argument, there simply is no reason to overturn the verdict simply because Plaintiff's counsel discussed Plaintiff's competing interpretation as to the intent and effects of the October 21 warning.

c. Conclusion as to New Trial Absolute Motion

For the foregoing reasons, Defendant's Motion for New Trial Absolute is DENIED.

2. Defendant's new trial nisi remittitur

Defendant also moves for a new trial nisi remittitur on the grounds that "the jury's verdict is excessive and is not supported by evidence in the record." Motion ¶ B(2).

a. Excessiveness

Defendant's excessiveness argument is limited to the amount of actual damages awarded by the jury. See Defendant's Memo in Support at 13-14.

The jury awarded precisely the amount of damages specified in Dr. Alford's Report. (Plaintiff's Exhibit 9). There was no question as to Dr. Alford's qualifications, and his Report was stipulated into evidence by Defendant. It was therefore the jury's right to decide whether to credit some or all of Dr. Alford's conclusions. *Small v. Springs Industries* ("Small II"), 300 S.C. 481, 488, 388 S.E.2d 808, 813 (1990) (determining that amount of front pay awarded was "within the range of damage testimony presented by [the plaintiff's] experts" and was therefore within the sole province of the jury to determine).

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Defendant primarily complains of the amount of lost wages awarded. Def. Memo in Support at 14. Specifically, Defendant argues: "To allow the jury to award six years of front pay without any facts supporting the underlying premise that she would continue working at the Beta Club until retirement age is totally unreasonable given that she was an otherwise at-will employee." *Id.*

Plaintiff worked practically her entire adult life for Beta Club and testified she planned to work there for as long as she could. Given her lengthy tenure and what the jury apparently found to be the lack of any justification for termination, it could be argued that it would be more speculative to assume that Plaintiff would have been terminated prior to retirement. In any event, the Supreme Court has specifically held that it is for the jury to determine how to determine what evidence to credit and to determine for how long Plaintiff would have remained employed. *Shivers v. John H. Harland Co.*, 310 S.C. 217, 221, 423 S.E.2d 105, 107 (1992) ("In *Small II*, the contract . . . was for an indefinite duration. Thus, for the purpose of establishing damages, **it appropriately was left to the jury to determine how long Small would have continued to be employed but for the wrongful discharge.**") (emphasis added). Likewise, the use of work life expectancy is proper and well accepted for purposes of expert testimony as to future damages. *Campbell v. Paschal*, 290 S.C. 1, 16, 347 S.E.2d 892, 902 (Ct. App. 1986).

The Court finds that the verdict is supported by evidence and is one which a reasonable jury could have reached. Further, the verdict is not so grossly excessive or inadequate that it shocks the conscience of the court and, further, the court finds that the verdict is not the result of caprice, passion, prejudice, partiality, corruption, or other improper motive. Further, the Court declines to exercise its discretion to reduce the

verdict based on the Court's determination that the amount of damages awarded is not excessive and within the amount established by Dr. Alford.

b. Insufficiency of evidence

Neither Defendant's Motion nor its Memorandum specifies how the evidence presented was insufficient to support Dr. Alford's opinion. To the extent Defendant is merely relying on the same bases as for its argument regarding the excessiveness of the verdict, the Court again finds that the verdict is supported by evidence in which a reasonable jury could have reached as explained in *Small II* and *Shivers*.

c. Conclusion as to Motion New Trial Nisi Remittur

For the foregoing reasons, Defendant's Motion for New Trial Nisi Remittur is DENIED.

d. Conclusion

For the foregoing reasons, Defendant's Motion for New Trial Nisi Remittur is DENIED.

C. Conclusion

For the foregoing reasons, Defendant's Motion for New Trial is DENIED.

IV. Plaintiff's Promissory Estoppel Claim

Plaintiff has brought a claim for promissory estoppel, which is admittedly based on the same promise that forms the basis of her contract claim. The elements of promissory estoppel are: (1) a promise unambiguous in its terms; (2) the party to whom the promise is made reasonably relies on it; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise. *Woods v. State*, 314

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S.C. 501, 505, 431 S.E.2d 260, 263 (Ct.App.1993). Contract and promissory estoppel are two separate and distinct legal theories. Contract and promissory estoppel are two different creatures of the law, and they are not legally synonymous; the birth of one does not spawn the other. *Satcher v. Satcher*, 351 S.C. 477, 570 S.E.2d 535 (Ct. App. 2002).

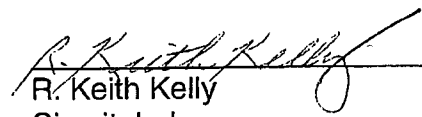
"The doctrine of promissory estoppel is equitable in nature." *West v. Newberry Elec. Co-op.*, 357 S.C. 537, 541-42, 593 S.E.2d 500, 502 (Ct. App. 2004). "[E]quity is generally only available when a party is without an adequate [contractual] remedy at law." *Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 327-28, 721 S.E.2d 447, 449 (Ct. App. 2011) (citations omitted).

The Court posed the following question to the jury: "Did an employment contract exist between Plaintiff, Denise Parker and Defendant, The National Honorary Beta Club?" The jury checked, "Yes." Accordingly, the jury found that there was a contract between the parties. Because a party may only recover under the theory of promissory estoppel where there is no contract, the promissory estoppel claim is hereby DISMISSED.

V. Summary and Conclusion

For the foregoing reasons, Defendant's Motion JNOV is Denied. Defendant's Motion for New Trial is Denied. Plaintiff's claim for promissory estoppel is DISMISSED.

IT IS SO ORDERED.


R. Keith Kelly
Circuit Judge

This 6th day of January, 2016