

STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No.: 2014-CP-26-8261

Appellate No.: 2017-000015

Wylie Neil Doyle, Timothy Lee, Anthony J. Mottola, III and David
Todd Appellants,

vs.

Horry County d/b/a Horry County Fire Rescue Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The statute of limitations bars Appellants' claims for wages, for in April 2008, the County issued a Statement of Wages form to each Appellant setting forth their new wages, each signed the Statement of Wages form in April 2008, each testified they believed their wages were incorrect when they signed their respective Statement of Wages form, and they did not bring suit against the County until December 11, 2014.
- II. The statute of limitations for Appellants' claims should not be equitably tolled, where Appellants fail to point to any evidence demonstrating the County actively misled the Appellants or prevented them from timely filing suit within the limitations period.
- III. The County should not be equitably estopped from asserting the statute of limitations as a defense to Appellants' claims because the Appellants, as they testified, possessed full knowledge that their pay was allegedly incorrect in April 2008, and the County did nothing to prevent them from timely filing suit within the limitations period.
- IV. As additional sustaining grounds, this Court should affirm the trial court's ruling because Appellants fail to present the necessary evidence to articulate causes of action for violation of the Wage Act, promissory estoppel, and quantum meruit

STATEMENT OF CASE

This case arises out of a proficiency pay increase, known as Propay, given by Horry County (“the County”) in 2008 to firefighters with paramedic certifications. (**Complaint**). Appellants are employed as firefighters/paramedics for the County and received the Propay increase.¹ (**Defendant’s Exhibit #3**).

The County Administrator approved the Propay increase for fighters/paramedics. (**Defendant’s Exhibit #3**). Thereafter, in April 2008, the County issued Statement of Wages forms to each Appellant. (**Plaintiff’s Exhibit #6, Plaintiff’s Exhibit #11, Plaintiff’s Exhibit #15, Plaintiff’s Exhibit #16**). The Statement of Wages form set forth the Appellants’ salaries and grades of employment before and after Propay. (**Plaintiff’s Exhibit #6, Plaintiff’s Exhibit #11, Plaintiff’s Exhibit #15, Plaintiff’s Exhibit #16**). Each Appellant signed the Statement of Wages form in April 2008. (**Trial Transcript p. 65, p. 144, p. 182, p. 198, Plaintiff’s Exhibit #6, Plaintiff’s Exhibit #11, Plaintiff’s Exhibit #15, Plaintiff’s Exhibit #16**). The County paid Appellants the wages set forth in the Statement of Wages document from April 2008 through the present date. (**Trial Transcript p. 66, pp. 144-45, pp. 182-83, p. 199**).

On December 11, 2014, more than six (6) years after the implementation of Propay, Appellants commenced this lawsuit against the County, alleging the County underpaid them when implementing Propay in 2008. (**Complaint**). Appellants asserted causes of action against the County for violation of the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10, et seq. (“Wage Act”), promissory estoppel, and quantum meruit. (**Complaint**). The County

¹ Appellants are four (4) of the fifty-four (54) firefighter/paramedic employees who received Propay. (**Defendants’ Exhibit #3**).

Answered on January 15, 2014 and asserted the defenses of the statute of limitations and full payment. (**Answer**).

This case was tried before the Honorable Larry B. Hyman, Jr. in Conway, South Carolina on September 20 and 21, 2016. (**Order Denying Plaintiffs' Motion for Reconsideration and New Trial**). Following the conclusion of Appellants' case-in-chief, the County moved for directed verdict on all of Appellants' claims. (**Order Denying Plaintiffs' Motion for Reconsideration and New Trial**). The trial court granted the County's motion for directed verdict, finding Appellants' claims were barred by the statute of limitations. (**Form 4 Order, Order Denying Plaintiffs' Motion for Reconsideration and New Trial**).

On October 4, 2016, Appellants filed a Motion for Reconsideration and New Trial, arguing the statute of limitations for their Wage Act claim² should be subject to the continuous accrual doctrine, which would start the clock anew for the statute of limitations with each alleged incorrect paycheck. (**Order Denying Plaintiffs' Motion for Reconsideration and New Trial**). Appellants further argued the doctrines of equitable tolling and equitable estoppel should be applied to prevent the County from asserting the statute of limitations defense. (**Order Denying Plaintiffs' Motion for Reconsideration and New Trial**).

On December 6, 2016, the trial court issued an Order Denying Appellants' Motion for Reconsideration and New Trial. (**Order Denying Plaintiffs' Motion for Reconsideration and New Trial**). Pursuant to Maher v. Titex Corp., 331 S.C. 371, 500 S.E.2d 201 (Ct. App. 1998), the trial court found the statute of limitations for Appellants' Wage Act claims began in April 2008,

² As noted in footnote 1 of the trial court's Order denying Appellants' post-trial motion, Appellants only attributed error to the trial court's ruling on the Wage Act cause of action in their post-trial motion. Consequently, this was the only cause of action addressed by the trial court in its Order. On appeal, Appellants make the same arguments with respect to all causes of action.

when each Appellant signed his Statement of Wages form, setting forth the new wage after the Propay increase, and continued for a period of three years thereafter. (**Order Denying Plaintiffs' Motion for Reconsideration and New Trial**). The trial court further refused to apply the doctrines of equitable tolling or equitable estoppel to save Appellants' claims from the statute of limitations. (**Order Denying Plaintiffs' Motion for Reconsideration and New Trial**).

Appellants then filed this Notice of Appeal on January 5, 2017.

STATEMENT OF FACTS

In 2006, Paul Whitten, Director of the Horry County Public Safety Department, formed a Working Group "to assist" him in reviewing salaries of certain employees in the Public Safety Department. (**Defendants' Exhibit #3; Transcript p. 73, p. 91**). Public Safety Director Whitten appointed Matthew Smith, who then held the position of Battalion Chief over Emergency Medical Operations with Horry County Fire/Rescue, as one of the members of the Working Group. (**Trial Transcript p. 70**). One of the issues the Working Group discussed was Propay. (**Trial Transcript p. 73**).

The Working Group was short-lived, holding meetings in 2006 and in 2007, but after 2007, the Working Group never met again. (**Trial Transcript p. 80, p. 91**). According to Smith, "We [the Working Group] had no authority."³ (**Trial Transcript p. 94**). Smith played no part in the County Administrator's subsequent approval of Propay for firefighters/paramedics in 2008. (**Trial Transcript p. 92**). Smith further testified that as Battalion Chief, he did not possess the authority to set employee's wages; according to Smith, as well as Fire Chief Fred Crosby, the County Administrator was "the only person" with the authority to set wages. (**Trial Transcript p. 80, p.**

³ Smith refers to the Working Group as the "working committee" or simply the "committee" in his testimony. (**Trial Transcript p. 70, p. 91**). "Working Group" is the name Mr. Whitten gave to the committee. (**Defendants' Exhibit #3**).

163). The County's Employment Guidelines, which were issued to Appellants, empowers the County Administrator alone to implement internal/operating guidelines for the County's pay and classification system. (**Trial Transcript pp. 54-55, p. 139, Horry County Employment Guidelines, p. 3**).

In 2008, the County Administrator, Danny Knight, approved the Propay increase for firefighters with paramedic certifications. (**Defendants' Exhibit #3, Trial Transcript p. 59, p. 64, p. 92**). The Propay increase approved by Administrator Knight required all firefighters/paramedics to be re-graded from Grade 17 employees to Grade 15 employees into their respective Step, and once re-graded, the County added the Propay in the amount of \$7,500 per year. (**Defendant's Exhibit #3**). The County implemented Propay in accordance with the policy approved by County Administrator Knight. (**Trial Transcript pp. 94-96, Defendants' Exhibit #3, Plaintiff's Exhibit #6, Plaintiff's Exhibit #11, Plaintiff's Exhibit #15, Plaintiff's Exhibit #16**).

In early 2008, Public Safety Director Whitten announced the County's plans to implement Propay and give other raises to employees. (**Plaintiffs' Exhibit #1**). Following the announcement, Smith prepared a letter on Fire Chief Gary Alderman's letterhead regarding the announced pay raises. (**Trial Transcript p. 92, Plaintiffs' Exhibit #1**). Smith sent the letter to all employees of Horry County Fire/Rescue. (**Trial Transcript pp. 33-34**). The letter Smith drafted set forth his understanding of how Propay would be implemented. (**Trial Transcript p. 71**). Smith neither reviewed the County's policy on Propay when preparing the letter, nor did he ask the County Administrator to approve its contents before sending it to Fire/Rescue employees. (**Trial Transcript pp. 92-93**). Smith's letter did not accurately explain the manner in which the County implemented Propay. (**Trial Transcript pp. 94-96**). Smith stated in his letter on two (2)

occasions—in the first and last paragraphs—that all employees receiving raises would receive a document from the County setting forth their new salaries.⁴ (**Plaintiffs’ Exhibit #1**). The document the County used to inform each Appellant of his new salary was a Statement of Wages form. (**Trial Transcript p. 62, Trial Transcript p. 144, pp. 182-83, pp. 198-99, Plaintiff’s Exhibit #6, Plaintiff’s Exhibit #11, Plaintiff’s Exhibit #15, Plaintiff’s Exhibit #16**).

Following Smith’s letter, in April 2008, the County issued a Statement of Wages form to each Appellant. (**Plaintiff’s Exhibit #1, Plaintiff’s Exhibit #6, Plaintiff’s Exhibit #11, Plaintiff’s Exhibit #15, Plaintiff’s Exhibit #16**). Each Statement of Wages form showed the respective Appellant’s salary and grades of employment before and after Propay. (**Plaintiff’s Exhibit #6, Plaintiff’s Exhibit #11, Plaintiff’s Exhibit #15, Plaintiff’s Exhibit #16**). Each Appellant signed, in April 2008, his respective Statement of Wages form. (**Trial Transcript p. 65, p. 144, p. 182, p. 198, Plaintiff’s Exhibit #6, Plaintiff’s Exhibit #11, Plaintiff’s Exhibit #15, Plaintiff’s Exhibit #16**). Each Appellant received a significant raise in his salary due to the Propay increase. (**Plaintiff’s Exhibit #6, Plaintiff’s Exhibit #11, Plaintiff’s Exhibit #15, Plaintiff’s Exhibit #16**). Appellant Doyle received a raise of \$4,244.24; Appellant Lee received a raise of \$4,544.64; Appellant Mottola received a raise of \$4,707.25; and Appellant Todd received a raise of \$4,136.76. (**Plaintiff’s Exhibit #6, Plaintiff’s Exhibit #11, Plaintiff’s Exhibit #15, Plaintiff’s Exhibit #16**).

⁴ The first paragraph reads, “It is my understanding that each person affected by the pay raises should be receiving a personal print out of your new salary as soon as finance has them available.”⁴ (**Plaintiffs’ Exhibit #1**). Similarly, the last paragraph contains similar language, stating, “Again it is our understanding that each individual who is affected by the pay raises should receive a personalized information sheet from finance as soon as they are available.” (**Plaintiffs’ Exhibit #1**).

The County paid Appellants the wages set forth in their respective Statement of Wages form from April 2008 through the present date. (**Trial Transcript p. 66, pp. 144-45, pp. 182-83, p. 199**). At trial, Appellants uniformly testified they did not believe their salary was calculated correctly when they signed their respective Statement of Wages form in April 2008. (**Trial Transcript p. 65, p. 144, pp. 182-83, pp. 187-88**). Nonetheless, all Appellants signed their respective Statement of Wages form. (**Trial Transcript p. 65, p. 144, p. 182, p. 198, Plaintiff's Exhibit #6, Plaintiff's Exhibit #11, Plaintiff's Exhibit #15, Plaintiff's Exhibit #16**). The Propay issue was dormant from April 2008 until 2013. (**Trial Transcript p. 39, 73, p. 83, p. 86, p. 112, p. 175, p. 188**).

In 2013, Ken Beans took over as the Interim Fire Chief of the Horry County Fire/Rescue. (**Trial Transcript p. 73, p. 83, p. 86**). Smith testified that Interim Chief Beans received some complaints from employees about their pay, and Beans asked Smith to perform "an assessment" of the issue. (**Trial Transcript p. 73**). Smith, for his part, testified that prior to this direction from Interim Chief Beans in 2013, he had no involvement with Propay since the Working Group disbanded in 2007. (**Trial Transcript p. 73, p. 83, p. 86**). After instructing Smith to perform an "assessment," Beans instructed Smith to stop his work until a permanent Fire Chief was hired. (**Trial Transcript p. 73**). Later in 2013, the County hired Fred Crosby as the permanent Fire Chief. (**Trial Transcript p. 156**). Chief Crosby instructed Smith to continue with his "assessment." (**Trial Transcript p. 73**). Smith testified that his "assessment" involved a determination of whether firefighters/paramedics received the correct amount of Propay from the County. (**Trial Transcript pp. 85-86**).

Chief Crosby brought up the Propay issue in a staff meeting on November 19, 2013. (**Trial Transcript p. 158-60, Plaintiff's Exhibit #2**). Chief Crosby disseminated notes from the staff

meeting to all Fire/Rescue employees. (**Trial Transcript p. 158-60, Plaintiff's Exhibit #2**). In the notes, Chief Crosby stated, "The issue of pro pay and the way it was applied to long term employees has been clouded and inconsistent [W]e had a meeting with finance yesterday and believe we have an agreement on fixing the issue." (**Plaintiffs' Exhibit #2**). Later in 2013, Smith completed his "assessment" of Propay and prepared a document, setting forth his belief as to the amount of pay the Appellants should have received as a result of the Propay increase in 2008. (**Trial Transcript pp. 85-86, p. 161, Plaintiff's Exhibit #8**). According to Smith's understanding, the Appellants were underpaid when Propay was implemented in 2008. (**Plaintiff's Exhibit #8**). Smith did not use the County's formula for calculating Propay when preparing the document, and he did not consult with Patrick Owens, Director of Human Resources for the County, to determine whether he correctly calculated Propay. (**Trial Transcript p. 81, pp. 92-93**). Smith is a firefighter and paramedic by trade; he has no experience in Human Resources, no Human Resources training, no accounting degree, and no experience as an accountant or bookkeeper. (**Trial Transcript p. 69, p. 79**).

When Smith's "assessment" was complete, Chief Crosby sent an email blast to all Horry County Fire/Rescue employees, advising, "All FF Paramedics have been reconciled. Cost to fix is 33K + per year." (**Trial Transcript p. 160, Plaintiff's Exhibit #3**). Thereafter, in 2014, Chief Crosby met with Patrick Owens, Human Resources Director for the County, and Public Safety Director Whitten. (**Trial Transcript pp. 164-65**). During that meeting, Public Safety Director Whitten explained the formula the County used to calculate Propay, and Public Safety Director Whitten showed Chief Crosby how the County calculated Propay. (**Trial Transcript p. 165**). Mr. Owens and Public Safety Director Whitten assured Chief Crosby that the Appellants received

every dollar they were entitled to receive from the County as a result of the Propay increase. (**Trial Transcript p. 165-67**).

Chief Crosby then created a video and sent it to all Fire/Rescue employees. (**pp. 125-26, p. 165, pp. 175-76, pp. 188-89**). In the video, Chief Crosby informed the Fire/Rescue employees how Propay had been explained to him. (**Trial Transcript p. 165, pp. 175-76**). Chief Crosby further stated that all employees had been paid correctly, and if they had any questions, they should contact Human Resources.⁵ (**Trial Transcript pp. 188-89**). Three (3) of the four (4) Appellants contacted Human Resources in the Summer 2014. (**Trial Transcript pp. 42-43, p. 126, p. 179, pp. 188-89, Plaintiff's Exhibit #4**). Human Resources met with Appellant Mottola and explained to him that he was paid correctly. (**Trial Transcript p. 128, p. 140-42**). Human Resources did not have an opportunity to meet with Appellants Doyle and Lee, as Appellants filed this lawsuit on December 11, 2014 before a meeting could be arranged. (**Trial Transcript p. 197**).

At trial, following the presentation of the Appellants' case-in-chief, the trial court granted the County's motion for a directed verdict, finding Appellants' Wage Act claims were barred by the statute of limitations. (**Order Denying Plaintiffs' Motion for Reconsideration and New Trial**). Appellants filed a Motion for Reconsideration and New Trial on October 4, 2016. (**Order Denying Plaintiffs' Motion for Reconsideration and New Trial**). The trial court issued an order denying that motion on December 6, 2016. (**Order Denying Plaintiffs' Motion for Reconsideration and New Trial**). This appeal followed.

STANDARD OF REVIEW

⁵ Some Appellants testified that Chief Crosby indicated that one (1) employee was underpaid in the video. (**Trial Transcript p. 41, pp. 125-26**). Allegedly, the employee Chief Crosby was referring to was Appellant Anthony J. Mottola. (**Trial Transcript pp. 125-26**). Appellant Mottola testified that after the video, he met with Human Resources Director Owens, who explained to him that he was paid correctly. (**Trial Transcript p. 128, p. 140-42**).

“In ruling on motions for directed verdict or judgment notwithstanding the verdict, 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 motions.” Steinke v. S.C. Dep’t of Labor, Licensing, & Regulation, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999). The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt. Id. An appellate court will reverse the trial court “only when there is no evidence to support the ruling below.” Id.; see Creech v. S.C. Wildlife & Marine Res. Dep’t, 328 S.C. 24, 29, 491 S.E.2d 571, 573 (1997). The appellate court will not disturb a trial court’s decision granting or denying a new trial unless that decision is wholly unsupported by the evidence or the court’s conclusions of law have been controlled by an error of law. S.C. Dep’t of Highways & Pub. Transp. v. E.S.I. Invs., 332 S.C. 490, 496, 505 S.E.2d 593, 596 (1998).

ARGUMENT

I. STATUTE OF LIMITATIONS

In opposing the County’s motion for directed verdict, Appellants argued their claims were subject to the continuous accrual doctrine, which would start the clock anew for the statute of limitations with each allegedly incorrect pay check Appellants received from the County. The trial court rejected this argument and determined Appellants’ causes of action were barred by the statute of limitations, pursuant to the Court of Appeals’ ruling in Maher v. Titex Corp., 331 S.C. 371, 500 S.E.2d 201 (Ct. App. 1998). This Court should affirm the trial court’s ruling.

A. Applicability of Maher v. Titex Corp.

In Maher, the Court of Appeals considered whether to apply the continuous accrual doctrine or the discovery rule to a former employee’s claim against his former employer for unpaid bonuses. The employer, a manufacturing company, hired the plaintiff in 1985. 331 S.C. at 375,

500 S.E.2d at 206. The plaintiff's offer letter stated he would be entitled to a fifty percent bonus plan as an employee of the company. Id. Pursuant to the bonus plan, fifty percent of the company's pre-tax profits would be divided among direct sales personnel, including the plaintiff. Id. No bonuses were distributed until 1987, when the plaintiff received a \$28,000.00 bonus. Id. In September 1987, the company decided to terminate the fifty percent bonus plan and replace it with a discretionary bonus plan. Id. The company failed to provide the plaintiff with written notice of the cancellation of the fifty percent bonus plan. Id. On September 27, 1994, the company terminated the plaintiff. Id. at 376, 500 S.E.2d at 206.

The day following his termination, on September 28, 1994, the plaintiff filed suit against the company, alleging he was owed bonuses pursuant to the fifty percent bonus plan from 1988 through 1994. Id. at 383, 500 S.E.2d at 210. The company argued the statute of limitations barred plaintiff from recovery. Id. The plaintiff alleged his action was timely because the company failed to pay bonuses to him every year from 1988 through 1994. Id. The plaintiff asserted this was a "continuing wrong," with the clock starting anew for the statute of limitations for every year in which the company failed to pay the bonus. Id.

The Court of Appeals found the company's failure to pay plaintiff in accordance with the fifty percent bonus plan was "a single wrong with continuing effects." Id. at 383, 500 S.E.2d at 211. In the Court's view, the single wrong occurred in 1987, when the company terminated the fifty percent bonus plan and replaced it with a purely discretionary bonus plan. Id. The Court of Appeals observed, "[t]he objective test in South Carolina's discovery rule is sufficient to allow plaintiffs the opportunity to discover and act upon the breach, without need for application of the 'continuing wrong' doctrine in this situation." Id. at 384, 500 S.E.2d at 211.

The discovery rule is well-established in South Carolina. Pursuant to the discovery rule,

[T]he statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. We have interpreted the ‘exercise of reasonable diligence’ to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist. Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial.

Dean v. Ruscon Corp., 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996) (emphasis added).

The date on which discovery should have been made is an objective, not subjective, question. Kreutner v. David, 320 S.C. 283, 465 S.E.2d 88 (1995). “In other words, whether the particular plaintiff actually knew he had a claim is not the test.” Joubert v. S.C. Dep’t of Soc. Servs., 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). “[C]ourts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.” Id.; see Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994) (exercise of reasonable diligence means simply that injured party must act with some promptness where facts and circumstances of injury would put person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist; statute of limitations begins to run from this point and not when advice of counsel is sought or full-blown theory of recovery is developed).

“South Carolina’s statute of limitations requires ‘very little to start the clock.’” Maher, 331 S.C. at 380, 500 S.E.2d at 208 (quoting Roe v. Doe, 28 F.3d 404, 407 (4th Cir. 1994)). The statute of limitations “is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to act with some

promptness.” Maier, 331 S.C. at 377, 500 S.E.2d at 207 (internal citations and quotations omitted).

Here, in April 2008, Horry County provided each Appellant with written notice of his Propay increase, when the County issued a Statement of Wages form to each Appellant. **(Plaintiff’s Exhibit #6, Plaintiff’s Exhibit #11, Plaintiff’s Exhibit #15, Plaintiff’s Exhibit #16)**. Each Statement of Wages form showed each Appellant’s salary and grade before and after Propay. **(Plaintiff’s Exhibit #6, Plaintiff’s Exhibit #11, Plaintiff’s Exhibit #15, Plaintiff’s Exhibit #16)**. Each Appellant signed their respective Statement of Wages form in April 2008. **(Trial Transcript p. 65, p. 144, p. 182, p. 198, Plaintiff’s Exhibit #6, Plaintiff’s Exhibit #11, Plaintiff’s Exhibit #15, Plaintiff’s Exhibit #16)**. At trial, each Appellant testified he understood his Statement of Wages form when he signed it in April 2008. **(Trial Transcript p. 65, p. 144, pp. 182-83, pp. 187-88)**. Appellants further testified that they believed their wages were incorrect when they signed their Statement of Wages form, as they believed they should have received additional pay as a result of the Propay increase. **(Trial Transcript p. 65, p. 144, pp. 182-83, pp. 187-88)**.

Accordingly, pursuant to the discovery rule and the Court of Appeals’ ruling in Maier, the statute of limitations for Appellants’ causes of action commenced with the issuance of the Statement of Wages form signed by each Appellant. In April 2008, Appellants, according to their own testimony, became aware that the Propay increase they received was incorrect, at least according to their understanding of Propay. From there, Appellants had three (3) years from the time they received written notice of their change in pay to bring suit. Appellants did not file suit until December 11, 2014. Because Appellants failed to file suit within three (3) years of when they received written notice of their change in pay, their causes of action for violation of the Wage Act, promissory estoppel, and quantum meruit are barred by the statute of limitations. See S.C.

Code Ann. Sec. 41-10-80(C) (requiring causes of action under the Wage Act to be commenced within three (3) years); S.C. Code Ann. § 15-3-530(1) (The statute of limitations applicable to actions on “contract, obligation, or liability, express or implied” is three years for actions arising on or after April 5, 1988.).

Appellants argue Maher is inapplicable because the Court of Appeals did not review plaintiff’s Wage Act cause of action on appeal. In Maher, the plaintiff asserted causes of action for breach of contract and violation of the Wage Act to recover the unpaid bonuses. Because the jury returned a higher verdict on the breach of contract claim, the plaintiff elected that remedy over his Wage Act claim. On appeal, the Court of Appeals considered whether the plaintiff’s breach of contract claim was barred by the statute of limitations and conducted the analysis above. In their brief, Appellants argue, without citation to any authority, that the result in Maher would have been different had the Court of Appeals analyzed the facts under the Wage Act.

Appellants’ argument fails to consider the nature of a Wage Act claim. The Wage Act “does not create an independent right to wages.” Anselmo v. W. Paces Hotel Grp., LLC, No. 9:09-2466-MBS, 2011 U.S. Dist. LEXIS 29520, at *30 (D.S.C. Mar. 18, 2011). The Wage Act simply requires employers to pay employees “all wages due.” S.C. Code Ann. § 41-10-40(A). The source of the “wages due” to an employee is not the Wage Act itself, but it is the employee’s contract, the employer’s policies, or the employer’s wage notification form (*e.g.* Terms of Employment Notice Form). Meisner v. ZymoGenetics, Inc., No. 3:12-684-CMC-PJG, 2014 U.S. Dist. LEXIS 133704, at *45 (D.S.C. July 30, 2014); Carolina All. for Fair Empl. v. S.C. Dep’t of Labor, Licensing, & Regulation, 337 S.C. 476, 490, 523 S.E.2d 795, 802 (Ct. App. 1999).

The analysis in Maher would have been the same under the Wage Act, because the issue would have been the same. The issue in Maher is whether to apply the continuous accrual doctrine

or the discovery rule to plaintiff's claim for unpaid bonuses. The Court of Appeals determined the discovery rule applied to the facts in Mahe, because the alleged "wrong" occurred in 1987, when the company eliminated the fifty percent bonus plan. The Court found the company's elimination of the fifty percent bonus plan constituted "a single wrong with continuing effects," and thus, the statute of limitations for plaintiff's claims began with this single wrong and continued for a period of three (3) years. The Court further observed that the discovery rule afforded the plaintiff ample opportunity to discover and act upon the company's elimination of the bonus plan, "without need for application of the 'continuing wrong' doctrine in this situation." The Court of Appeals would not have employed a different analysis if viewing the evidence in Mahe under the Wage Act. As set forth above, in a Wage Act cause of action, the plaintiff merely alleges the employer failed to pay the employee "wages due" under a contract or Statement of Wages form. In Mahe, the thrust of plaintiff's Wage Act claim was the same as his breach of contract claim—that his employer failed to pay bonuses to him. The Court clearly would have conducted the same analysis if analyzing the claim under the Wage Act.

As such, the Court of Appeals' decision in Mahe is directly on point in determining whether to apply the continuous accrual doctrine or the discovery rule to Appellants' Wage Act and equitable claims against the County. Like Mahe, the alleged "wrong" occurred when the County implemented Propay in April 2008. The Appellants testified they discovered their pay was incorrect when they signed the Statement of Wages form in April 2008. (**Trial Transcript p. 65, p. 144, pp. 182-83, pp. 187-88**). Therefore, like Mahe, Appellants' statute of limitations began in April 2008 and expired three years later.

Accordingly, the trial court did not err in finding Appellants' causes of action were barred by the statute of limitations.⁶

B. Wage Act Does Not Require Application of the Continuous Accrual Doctrine

Appellants next argue that a "plain reading" of the Wage Act requires adherence to the continuous accrual doctrine.

As an initial matter, Appellants' argument that a "plain reading" of the Wage Act requires adherence to the continuous accrual doctrine is not preserved for appellate review. Appellants never made this argument to the trial court in opposing the County's motion for directed verdict. (**Trial Transcript pp. 200-230**). Appellants made this argument for the first time in their post-trial motion. (**Appellants' Motion for Reconsideration and New Trial, p. 4**). As such, this argument is not preserved for appellate review. See S.C. Dep't of Transp. v. First Carolina Corp., 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) ("It is well settled that an issue may not be raised for the first time in a post-trial motion.").

Even if this argument were preserved for appeal, it is legally incorrect. The plain text of the Wage Act makes no reference to the continuous accrual doctrine, nor does it provide that the statute of limitations begins anew with each incorrect paycheck. The Wage Act sets forth a general statute of limitations, requiring claims asserted under its provisions to be commenced within three years. S.C. Code Ann. § 41-10-80(C). Appellants cite no precedent interpreting the Wage Act in accordance with their argument. Furthermore, Appellants' argument disregards the Court of Appeals' ruling in Maher, where the Court found a former employee's claim for wages against his former employer was not subject to the continuous accrual doctrine.

⁶ Appellants treat their causes of action for violation of the Wage Act, promissory estoppel, and quantum meruit as the same for purposes of their statute of limitations argument. The County has responded to them in the same fashion.

Accordingly, the statutory text of the Wage Act does not require this Court to apply the continuous accrual doctrine in this case.

II. EQUITABLE TOLLING

The trial court correctly refused to apply the equitable tolling doctrine to save Appellants' claims from the statute of limitations.

“Equitable tolling is judicially created; it stems from the judiciary’s inherent power to formulate rules of procedure where justice demands it.” Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009) (citing Rodriguez v. Superior Court, 176 Cal. App. 4th 1461, 98 Cal. Rptr. 3d 728 (Ct. App. 2009)). “Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness.” Hooper, 386 S.C. at 115, 687 S.E.2d at 32. Equitable tolling may be applied “[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits” Id. The party seeking to invoke the doctrine of equitable tolling bears the “devoir of persuasion” and must establish a “compelling basis for awarding such relief.” Ocana v. Am. Furniture Co., 2004 NMSC 18, 135 N.M. 539, 91 P.3d 58, 65 (N.M. 2004) (citing 54 C.J.S. Limitations of Actions § 115).

“[E]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control.” Hooper, 386 S.C. at 116, 687 S.E.2d at 32 (2009). “Equitable tolling applies either where the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering the facts essential to the filing of a timely lawsuit, or where the plaintiff has timely raised the same claim in the wrong forum.” Kaplan v. Morgan Stanley & Co., 2009 VT 78, ¶ 11, 186 Vt. 605, 610, 987

A.2d 258, 264 (Vt. 2009). “[E]quitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use.” Hooper, 386 S.C. at 117, 687 S.E.2d at 33.

Appellants fail to raise any compelling reason to justify the equitable tolling of the statute of limitations. Appellants testified they believed their wages were incorrect when they signed their respective Statement of Wages form in April 2008. (**Trial Transcript p. 65, p. 144, pp. 182-83, pp. 187-88**). Appellants point to no evidence demonstrating the County actively misled or prevented them from timely filing suit within the limitations period. Appellants argue they attempted to resolve the Propay issue with County before resorting to litigation, and for this reason, the Court should equitably toll the statute of limitations. (**Appellants’ Initial Brief, p. 15**). Appellants cite to no case law applying the equitable tolling doctrine under such circumstances. Furthermore, the evidence reveals Appellants did not actively attempt to resolve the Propay issue with the County, from the time of the Propay increase in April 2008 until the commencement of this action on December 11, 2014.

The Propay issue was dormant from the time the County issued the Statement of Wages forms in April 2008 until 2013. The record reflects no actions taken by Appellants to complain about Propay to anyone with the County from April 2008 until 2013. Matthew Smith testified he had no involvement with Propay from 2007, when the Working Group disbanded, until 2013. (**Trial Transcript p. 73, p. 83, p. 86**). The only Fire Chief the Appellants ever communicated with about Propay is Fred Crosby. (**Trial Transcript p. 39, p. 112, p. 175, p. 188**). Crosby did not become Fire Chief until 2013. (**Trial Transcript p. 156**). Appellants presented no evidence—no documents, no testimony—showing they communicated with another Fire Chief about Propay prior to 2013. As for Human Resources, the record reflects Appellants did not begin discussing the Propay issue with Human Resources until 2014, following Chief Crosby’s video announcement

that all employees were paid correctly. (Trial Transcript p. 42, p. 126, p. 128, pp. 179-80, p. 189).

By the time Appellants finally raised the Propay issue with the County in 2013, the statute of limitations on their claims had long since expired. As set forth above, the statute of limitations on Appellants' claims commenced in April 2008, with the issuance of the Statement of Wages forms, setting forth their respective salary after the implementation of Propay. The statute of limitations on Appellants' claims expired three years later—in April 2011. None of the communication with and from Chief Crosby or Matthew Smith in 2013 or with Human Resources in 2014 can resuscitate Appellants' claims.

Accordingly, for the foregoing reasons, this Court should refuse to apply the doctrine of equitable tolling to save Appellants' claims from the statute of limitations.

III. EQUITABLE ESTOPPEL

The trial court correctly refused to apply the doctrine of equitable estoppel to bar the County from raising the statute of limitations as a defense.

Equitable estoppel operates to deny a party “the right to plead or prove an otherwise important fact.” Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994). “The doctrine of estoppel applies if a person, by his actions, conduct, words or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury.” Rushing v. McKinney, 370 S.C. 280, 293, 633 S.E.2d 917, 924 (Ct. App. 2006). Prejudice to the other party is an essential element of equitable estoppel. Janasik v. Fairway Oaks Villas Horizontal Prop. Regime, 307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992).

With regard to the party estopped, the elements of equitable estoppel are: (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2)

the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts. Maier, 331 S.C. at 381, 500 S.E.2d at 209. As to the party claiming estoppel, the elements are (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position. Southern Dev. Land & Golf Co., v. S.C. Pub. Serv. Auth., 311 S.C. 29, 33, 426 S.E.2d 748, 750 (1993).

Appellants' argument that the County should be equitably estopped from raising the statute of limitations defense is not preserved for appellate review. Appellants never made this argument to the trial court in opposing the County's motion for directed verdict. (**Trial Transcript pp. 200-230**). Appellants made this argument for the first time in their post-trial motion. (**Appellants' Motion for Reconsideration and New Trial, pp. 7-8**). As such, this argument is not preserved for appellate review. See Dawkins v. Mozie, 399 S.C. 290, 294, 731 S.E.2d 342, 345 (Ct. App. 2012) (finding an issue not preserved for appellate review, where the appellants failed to raise it during the hearing before the trial court and argued it for the first time in their post-trial motion).

Even if this issue were preserved, Appellants fail to demonstrate the elements necessary for equitable estoppel. In their brief, Appellants argue the doctrine should be applied because on November 19, 2013, Chief Crosby sent notes from a staff meeting to all Fire/Rescue employees. In the notes, Chief Crosby stated, "[W]e had a meeting with finance yesterday and believe we have an agreement on fixing the issue." (**Plaintiffs' Exhibit #2**). Appellants argue this statement from Chief Crosby, who by his own admission had no authority whatsoever to set Appellants' wages, justifies the application of the doctrine of equitable estoppel. (**Trial Transcript p. 163**). Appellants' argument disregards the fact that by the time Chief Crosby sent the staff notes on November 19, 2013, the statute of limitations for Appellants' claims had long since expired. All

of the Appellants testified they believed their pay was incorrect when they signed the Statement of Wages form in April 2008. (Trial Transcript p. 65, p. 144, pp. 182-83, pp. 187-88). Therefore, the statute of limitations for any deficiencies in their pay began in April 2008 and expired in April 2011, and Chief Crosby's statement that he "believe[s] we have an agreement on fixing the issue" in November 2013 does not bar the County from asserting the statute of limitations as a defense.

Furthermore, Appellants point to no evidence of any inequitable conduct on the part of the County sufficient to justify equitable estoppel. Likewise, they point to no evidence demonstrating their conduct warrants this relief.

Accordingly, this Court should find the trial court did not err in refusing to apply the doctrine of equitable estoppel.

IV. ADDITIONAL SUSTAINING GROUNDS

As established by the Supreme Court in I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) and later adopted as Rule 220(c) of the South Carolina Appellate Court Rules, this Court may affirm the trial court's ruling, granting the County's motion for directed verdict, for any ground appearing in the record. In granting the County's motion for directed verdict, the trial court found Appellants' claims were barred by the statute of limitations and granted the County's motion for directed verdict on that basis alone. Substantively, Appellants' causes of action also fail as a matter of law because: (A) Appellants cannot assert a cause of action for violation of the Wage Act, where the County paid Appellants those wages set forth in their respective Statement of Wages form; (B) Appellants fail to demonstrate the elements of a promissory estoppel cause of action; and (C) Appellants fail to demonstrate the elements of a quantum meruit claim.

A. Wage Act

Appellants do not have a cause of action for violation of the Wage Act, because the Wage Act only obligates the County to pay Appellants those wages set forth in their respective Statements of Wages forms, which the County did.

The Wage Act “is a notice statute.” Carolina All. for Fair Empl., 337 S.C. at 491, 523 S.E.2d at 803. “It is intended to provide the employee with the information requisite to make an educated decision whether or not to accept employment.” Id.

The Wage Act requires “every employer to notify each employee in writing at the time of hiring of the normal hours and wages agreed upon, the time and place of payment, and the deductions which will be made from the wages, including payments to insurance programs.” S.C. Code Ann. § 41-10-30(A); see Carolina All. for Fair Empl., 337 S.C. at 491, 523 S.E.2d at 803 (“The wages, hours, and time and place of payment must be stated.”). The South Carolina Department of Labor, Licensing and Regulation (“LLR”) has adopted a “Terms of Employment Notice Form” for all employers to use in providing employees with this information.⁷

The Wage Act requires employers to pay employees “all wages due.” S.C. Code Ann. § 41-10-40(A). The term “wages” is defined as “all amounts at which labor is recompensed,” including “vacation, holiday, and sick leave payments which are due to an employee under any employer policy or employment contract.” Id. The Wage Act creates a cause of action for an employee against an employer for the employer’s failure to pay wages as required by the Act. S.C. Code Ann. § 41-10-80(C).

⁷ A copy of the Terms of Employment Notice Form approved by the LLR is available to employers on its website, at the following link:
<http://www.llr.state.sc.us/Labor/index.asp?file=wages/formswages.htm>.

The Wage Act does not create an independent right to wages. Anselmo, No. 9:09-2466-MBS, 2011 U.S. Dist. LEXIS 29520, at *30. The employee contract, the employer's policies, or the employer's wage notification (e.g. Terms of Employment Notice Form) are the sources of the right to wages, not the Wage Act statute. Id.; Meisner, No. 3:12-684-CMC-PJG, 2014 U.S. Dist. LEXIS 133704, at *45; Carolina All. for Fair Empl., 337 S.C. at 490, 523 S.E.2d at 802.

In Meisner, the plaintiff alleged her employer violated the Wage Act by failing to pay incentive pay to her from April through July 2010. 2014 U.S. Dist. LEXIS 133704, at *43. The employer filed a motion for summary judgment, arguing it was not required to pay the plaintiff incentive pay because its policy did not require it. Id. Specifically, the employer's policy stated that incentive pay was not earned if the employee was not employed on the specified date for payout, which was August 31, 2010. Id. at *46. Plaintiff was not employed on August 31, 2010. Id. The United States District Court for the District of South Carolina, Columbia Division granted the employer's motion for summary, finding the employer did not owe any "wages" to plaintiff under the Wage Act, because the employer was not required to pay incentive pay to the plaintiff under its policy. Meisner, at *46-*50; see Visco v. Aiken Cty., 974 F. Supp.2d 908, 920 (D.S.C. 2013) (granting summary judgment to the County on the employee's Wage Act claim because the County paid benefit days to the employees the way its ordinances said it would).

In Rice v. Multimedia, Inc., the plaintiff worked as a radio advertising salesperson. In June 1990, the plaintiff was terminated. 318 S.C. 95, 96-97, 456 S.E.2d 381, 382 (1995). At the time of his termination, the plaintiff had not been paid commissions for certain advertisements that he sold but were not yet broadcast. Id. at 97, 456 S.E.2d at 382. The employee handbook provided that sales commissions would be paid to a departing employee only for those advertisements sold by the employee and actually broadcast through the end of the month in which the employee

worked his last day. Id. On the day of the plaintiff's termination, the advertisements had not been broadcast; thus, the employer refused to pay commissions to the plaintiff for the advertisements that had not yet been broadcast. Id. The plaintiff brought suit under the Wage Act to recover commissions for the advertisements. Id. The trial court granted the employer's motion for directed verdict. Id. On appeal, the Supreme Court affirmed the trial court's ruling, finding that "[the employer's] departure policy establishes the manner in which it will pay sales commissions." Id. at 100, 456 S.E.2d at 384. Because the employer did not owe commissions to the plaintiff for the yet to be broadcast advertisements, no wages were owed to him. Id.

In Baugh v. Columbia Heart Clinic, P.A., 402 S.C. 1, 738 S.E.2d 480 (Ct. App. 2013), the South Carolina Court of Appeals reached a similar result. In Baugh, two (2) cardiologists entered into employment contracts with Columbia Heart Clinic. Id. at 8-9, 738 S.E.2d at 484-85. The contracts provided that the cardiologists would forfeit money payable to them upon termination if they competed with Columbia Heart Clinic in a certain geographic area within one (1) year after their employment ended. Id. Specifically, the forfeiture clause in the contracts provided that if the cardiologists competed with Columbia Heart Clinic in violation of the agreement, they would forfeit any monies payable to them under Section 4.5 of the contracts. Id. at 25, 738 S.E.2d at 493. Section 4.5 provided that upon termination of their employment, the cardiologists would be entitled to \$60,000.00; all salary earned or accrued but unpaid as of the date of termination; and their share of the accounts receivable, computed on the date of the employee's termination. Id.

The cardiologists resigned from Columbia Heart Clinic and began competing against Columbia Heart Clinic in violation of their contracts. Id. at 28, 738 S.E.2d at 495. Columbia Heart Clinic refused to pay the cardiologists those sums contemplated by Section 4.5 of their contracts. Id. The cardiologists brought suit under the Wage Act to recover all earned but unpaid salary and

their share of the accounts receivable.⁸ Id. at 27, 738 S.E.2d at 494-95. The Court of Appeals found the forfeiture clause in the contracts was enforceable and found that pursuant to that provision, the cardiologists forfeited their rights to recover earned but unpaid salary and their share of the accounts receivable. Id. at 29, 738 S.E.2d at 495. Thus, the Court of Appeals concluded that because the cardiologists had forfeited their rights to this compensation under the contracts, they were not owed any “wages” under the Wage Act. Id.

Lastly, in Carolina All. for Fair Empl., the South Carolina Court of Appeals interpreted the Wage Act. The Court of Appeals initially observed that LLR is the agency charged with the administration of the Wage Act. See S.C. Code Ann. § 41-10-70. “The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons.” Dunton v. S.C. Bd. of Exam’rs. in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987). LLR has interpreted the Wage Act to require the employer to pay only those wages set forth in the Terms of Employment Notice Form. Carolina All. for Fair Empl., 337 S.C. at 490, 523 S.E.2d at 802. LLR has interpreted the Wage Act as follows:

This Section allows an employer to set any wage terms that he finds appropriate. For example if the employer can find workers who will work eighteen (18) hours a day, six (6) days a week, fifty (50) weeks a year for a peppercorn, the State of South Carolina will not require that he pay them any more than that. This statute does require that the employer put the terms of employment in writing so that the worker knows what the arrangement is at the time he or she is hired. The employer, using the example just given, is obligated to pay the peppercorn at the time and place he has designated.

When the employee receives that notice, he can choose to work under that arrangement or he can go on to another employer.

⁸ The cardiologists did not seek payment for the \$60,000.00 severance pay.

Id. at 490-91, 523 S.E.2d at 802-03 (emphasis added).

Here, the County changed Appellants' wages, with the implementation of Propay. The County notified Appellants of their new wages by presenting each Appellant with a Statement of Wages form, which is similar to the Terms of Employment Notice Form approved by LLR. **(Plaintiff's Exhibit #6, Plaintiff's Exhibit #11, Plaintiff's Exhibit #15, Plaintiff's Exhibit #16).** The Statement of Wages form informed Appellants of their old salary and their new salary. Each Appellant signed their respective Statement of Wages form in April 2008, evidencing that they received notification of their new wages. **(Trial Transcript p. 65, p. 144, p. 182, p. 198, Plaintiff's Exhibit #6, Plaintiff's Exhibit #11, Plaintiff's Exhibit #15, Plaintiff's Exhibit #16).**

The Statements of Wages form for each Appellant provided as follows:

For Appellant Doyle, the Statement of Wages stated his existing salary of \$40,653.76 and his new salary as \$44,898.00.

For Appellant Lee, the Statement of Wages stated his existing salary of \$36,883.55 and his new salary as \$41,428.19.

For Appellant Mottola, the Statement of Wages stated his existing salary of \$34,855.13 and his new salary as \$39,562.38.

For Appellant Todd, the Statement of Wages stated his existing salary of \$42,006.95 and his new salary as \$46,143.71.

For Appellant Gibbins, the Statement of Wages stated his existing salary of \$35,023.25 and his new salary as \$39,719.47.

(Plaintiff's Exhibit #6, Plaintiff's Exhibit #11, Plaintiff's Exhibit #15, Plaintiff's Exhibit #16).

Under the Wage Act, the County was obligated to pay Appellants in accordance with the Statement of Wages form. The County did so. In fact, Appellants do not allege the County failed to pay them in accordance with their respective Statement of Wages form, which again, each Appellant signed. **(Trial Transcript p. 66, pp. 144-45, pp. 182-83, p. 199).** Instead, Appellants take issue with the manner in which their wages were calculated. Appellants argue their wages

should have been calculated differently to reflect a higher salary than the salary set forth in their respective Statements of Wages form.

Appellants' argument fails to assert a cognizable theory of recovery under the Wage Act. All the County was obligated to do under the Wage Act is to pay Appellants in accordance with their Statement of Wages form which each Appellant signed, which the County did. See Anselmo, U.S. Dist. LEXIS 29520, at *30 (The Wage Act, itself, does not create an independent right to wages); Rice, 456 S.E.2d at 382-84 (The Wage Act requires the employer to only pay those commissions set forth in the employee handbook); Baugh, 402 S.C. at 29, 738 S.E.2d at 495 (The employer was obligated only to pay those wages as set forth in the employment contracts with the cardiologists).

Neither Appellants, nor the Chief Crosby, nor Matthew Smith possessed the authority to set Appellants' wages. Chief Crosby and Smith acknowledged this fact at trial. (**Trial Transcript p. 80, p. 163**). The County alone maintained the authority to set Appellants' wages. See Carolina All. for Fair Empl., 337 S.C. at 490-91, 523 S.E.2d at 802-03 (“[T]he Wage Act] allows an employer to set any wage terms that he finds appropriate When the employee receives that notice, he can choose to work under that arrangement or he can go on to another employer.”). The County set Appellants' wages in April 2008, when implementing Propay. The County provided notice to Appellants of their new wages and paid them in accordance with their respective Statement of Wages form. (**Trial Transcript p. 66, pp. 144-45, pp. 182-83, p. 199**). This was all the County was obligated to do under the Wage Act.

Accordingly, Appellants cannot set forth a cause of action for violation of the Wage Act, because the County paid them in accordance with the Statement of Wages forms.

B. Promissory Estoppel

Appellants' promissory estoppel claim fails as a matter of law because Appellants cannot demonstrate the existence of an unambiguous promise, reasonable reliance on that promise, or injury in reliance on that promise.

The doctrine of promissory estoppel provides:

An estoppel may arise from the making of a promise, even though without consideration, **if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice.**

Higgins Constr. Co. v. Southern Bell Tel. & Tel. Co., 276 S.C. 663, 281 S.E.2d 469, 470 (1981) (emphasis added).

To prove estoppel against the government, the relying party must prove: (1) the lack of knowledge and of the means of knowledge of the truth of the facts in question; (2) justifiable reliance upon the government's conduct; and (3) a prejudicial change in position. S.C. DOT v. Horry Cty., 391 S.C. 76, 83, 705 S.E.2d 21, 25 (2011); Bishop v. City of Columbia, 401 S.C. 651, 664, 738 S.E.2d 255, 261 (Ct. App. 2013). In order to recover under a theory of promissory estoppel, a claimant must demonstrate: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance on the promise; (3) the reliance was expected and foreseeable; and (4) injury in reliance on the promise. Craft v. S.C. Comm'n for the Blind, 385 S.C. 560, 565, 685 S.E.2d 625, 627 (Ct. App. 2009). The applicability of the doctrine of promissory estoppel depends on whether the refusal to apply it would virtually sanction the perpetration of fraud or would result in other injustice. Citizens Bank v. Gregory's Warehouse, Inc., 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct. App. 1988).

Appellants allege a 2008 letter written by Matthew Smith on then Fire Chief Alderman's letterhead constitutes an unambiguous promise regarding their new salary. The letter does not set

forth an unambiguous promise, whereby the County agreed to pay Appellants a certain salary. At the beginning of the letter, Smith states, “each person affected by the pay raises should be receiving a personal print out of your new salary as soon as finance has them available.” (**Plaintiffs’ Exhibit #1**). Then, at the end of the letter, Smith again states, “each individual who is affected by the pay raises should receive a personalized information sheet from finance as soon as they are available.” (**Plaintiffs’ Exhibit #1**). Thus, according to the Smith letter, it is clear there will be a forthcoming document from the County, informing each affected employee of his/her new salary. Smith made this statement twice in his letter. These two (2) statements prevent the Smith letter from being construed as an unambiguous promise by the County to pay Appellants a certain salary. According to the letter, the document with this information was forthcoming from the County.

Later that same month, in April 2008, the County informed each Appellant what his new salary would be, when it issued the Statements of Wages form. Accordingly, because of the limiting nature of Smith’s letter, it cannot be read as an unambiguous promise to pay each Appellant a certain salary going forward. See Davis v. Greenwood Sch. Dist., 365 S.C. 629, 634-35, 620 S.E.2d 65, 67-68 (2005) (holding plaintiffs could not rely upon representations by a governmental employee where the employee explicitly said his assertions were subject to the school board’s approval).

Appellants further argue that Smith and Chief Crosby promised them higher wages in 2013. This alleged promises occurred some five (5) years after the County issued the Statement of Wages form to each Appellant. Nonetheless, Appellants argue an email from Smith in December 2013 to Appellant Lee constituted an unambiguous promise to pay them a higher salary. (**Plaintiff’s Exhibit #9**). In the email, Smith set forth his understanding of how Propay should have been implemented in April 2008. On November 19, 2013, Chief Crosby sent a copy of his staff meeting

notes to all Fire/Rescue employees, wherein he stated, he “believe[d] we have an agreement on fixing [the Propay] issue.” (**Plaintiff’s Exhibit #2**). The statements by Smith and Crosby do not amount to an unambiguous promise to pay wages by the County to Appellants. The Smith email simply sets forth his understanding of how Propay should have been implemented; it does not contain a promise on the part of the County to pay Appellants. Likewise, Crosby’s staff notes merely set forth his “belief” that there is an agreement to fix the Propay issue. None of these statements constitute an unambiguous promise to pay wages to Appellants.

Even if they did, Appellants were not justified in relying on any of the alleged three (3) promises. Neither Smith, nor the Fire Chief had the authority to set Appellants’ wages, and Appellants were on notice of this fact, by virtue of being issued a copy of Horry County’s Employment Guidelines. (**Trial Transcript p. 80, p. 163**). Horry County’s Employment Guidelines empowers the County Administrator alone to set compensation for employees. (**Horry County Employment Guidelines, p. 3, Trial Transcript p. 163**). Appellants knew or should have known that neither the Smith, nor the Fire Chief possessed the authority to set their wages. Thus, to the extent Appellants relied on any alleged promises, such reliance was unreasonable. See Charleston Cnty. v. Nat’l Advert Co., 292 S.C. 416, 418, 357 S.E.2d 9, 10 (1987) (The acts of a city official acting within the proper scope of his or her authority may give rise to estoppel against a municipality.).

Lastly, in order to prevail on an estoppel claim against a governmental entity, a plaintiff must demonstrate “the lack of knowledge and of the means of knowledge of truth of the facts in question.” S.C. DOT v. Horry Cty., 391 S.C. at 83, 705 S.E.2d at 25. Here, the County informed the Appellants what their new salaries would be in April 2008. Under these facts, Appellants cannot demonstrate that they did not know what their new salaries would be.

Accordingly, Appellants fail to satisfy the necessary elements of a promissory estoppel claim.

C. Quantum Meruit

Appellants' quantum meruit claim fails as a matter of law, as Appellants cannot demonstrate that the County retained a benefit that it did not pay for.

Quantum meruit is an equitable doctrine which allows recovery for unjust enrichment under a quasi-contract theory. Columbia Wholesale Co. v. Scudder May N.V., 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). "The elements of a quantum meruit claim are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value." Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 616-17, 703 S.E.2d 221, 225 (2010).

The County paid Appellants in accordance with the Statements of Wages forms that were issued to each Appellant, and signed by each Appellant, in April 2008. (**Trial Transcript p. 66, pp. 144-45, pp. 182-83, p. 199**). Thus, to the extent Appellants conferred a benefit upon the County, the County paid Appellants for this benefit in the form of the salary it agreed to pay. There are no benefits Appellants provided to the County that the County has not paid for.

Accordingly, Appellants' fail to demonstrate the elements necessary for a quantum meruit cause of action.

CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's ruling, granting the County's motion for directed verdict on all of the causes of action asserted by Appellants.

Respectfully submitted,

McNAIR LAW FIRM, P.A.

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May 30, 2017

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY

Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

RECEIVED

MAY 30 2017

SC Court of Appeals

Case No.: 2014-CP-26-8261

Appellate No.: 2017-000015

Wylie Neil Doyle, Timothy Lee, Anthony J. Mottola, III and David Todd Appellants,

vs.

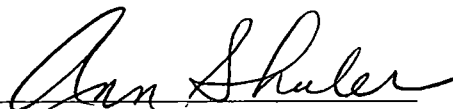
Horry County d/b/a Horry County Fire Rescue Respondent.

PROOF OF SERVICE

I, Ann Shuler, an employee of McNair Law Firm, P.A., attorneys for Respondent, in the above-entitled action, certify that I have served the Initial Brief of Respondent, Designation of Matters to be Included in Record of Respondent Horry County d/b/a Horry County Fire Rescue and Proof of Service on Counsel of Record to this matter by depositing a copy in the United States Mail, first class, postage prepaid and via Email on the 30th day of May, 2017 as follows:

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May 30, 2017

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HAND DELIVERY

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Wylie Neil Doyle, et al. v. Horry County d/b/a Horry County Fire
Rescue
Case No.: 2014-CP-26-8261
Appellate Case No.: 2017-000015

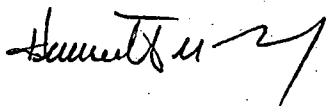
Dear Ms. Kitchings:

Enclosed for filing with the Court, please find original and one (1) copy of Respondent's Initial Brief, Designation of Matters to be Included in Record, and Proof of Service in regard to the above matter. Please provide our courier with a filed copy of the Initial Brief, Designation and Proof of Service in the envelope provided herein.

Pursuant to the Proof of Service, a copy of the aforementioned has been served on Counsel of Record.

Sincerely,

McNAIR LAW FIRM, P.A.



Henrietta U. Golding

HUG:ck

RECEIVED

MAY 30 2017

SC Court of Appeals

cc: Horry County (*via email*)
J. Paul Porter, Esquire (*Via Email and U.S. Mail*)

Enclosures

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