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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY  
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2015-002090  
Circuit Case No. 2012-CP-01-00158

**RECEIVED**  
AUG 10 2018  
SC Court of Appeals

William Crenshaw,

Appellant,

v.

Erskine College and David A. Norman,

Respondents.

PETITION FOR REHEARING BY RESPONDENTS

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NOW COME Respondents Erskine College and David A. Norman (collectively referred to as “Erskine”), by and through their undersigned counsel, and hereby petition this Honorable Court for rehearing of this matter. This Court decided this appeal by published opinion dated June 27, 2018 (“Subject Decision”),<sup>1</sup> reversing the trial court’s order granting Erskine’s motion for JNOV.<sup>2</sup>

**MATERIAL POINTS**  
**OVERLOOKED OR MISAPPREHENDED**

Most respectfully, the Subject Decision is erroneous as explained in Erskine’s material points overlooked or misapprehended by the Court.

**I. The Court overlooked or misapprehended the requirements for preserving an issue for appeal in holding that Crenshaw’s argument that Erskine breached the covenant of good faith and fair dealing was properly preserved.**

The Court held that Crenshaw’s argument on appeal—that Erskine breached the covenant of good faith and fair dealing—was properly preserved solely because Crenshaw’s attorney used the phrase “it shows a lack of good faith” when opposing Erskine’s motion for directed verdict—a motion that Crenshaw won— at the close of evidence at trial. (*See* Exhibit A, p. 9, n. 4.)

**A. The Court overlooked or misapprehended that Crenshaw’s only reference to “a lack of good faith” was in Erskine’s directed verdict motion, which Crenshaw won and thus at which time he was not the losing party or the aggrieved party, and that Crenshaw never renewed that argument after he became the aggrieved and losing party.**

“Only a party aggrieved by an order, judgment, sentence or decision may appeal.” 201(b), SCACR. “An aggrieved party is one who is aggrieved by the judgment or decree when it operates on his rights of property or bears directly on his interest, the word aggrieved referring to a

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<sup>1</sup> By orders filed July 11, 2018, and July 26, 2018, this Court extend the time for serving and filing Respondents’ Petition for Rehearing first until July 27, 2018, and second until August 13, 2018.

<sup>2</sup> For ease of reference, a copy of the Subject Decision (with page numbers added for citation purposes) is attached hereto as Exhibit A.

substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation. A party cannot appeal from a decision which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other person.” *First Union Nat’l Bank v. Soden*, 333 S.C. 554, 565, 511 S.E.2d 372, 378 (Ct. App. 1998) (citations omitted).

“The *losing party* must first try to convince the lower court it . . . has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the *losing party* generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments.”

*I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422; 526 S.E.2d 716, 724 (2000) (emphasis added) (citations omitted). Crenshaw did not gain the right to appeal until he was aggrieved by an order or judgment, i.e. until he became a “losing party,” which did not happen until the trial court’s order granting a new trial after Erskine moved for JNOV and alternatively a new trial. Crenshaw made his only reference related—although Erskine denies it is a sufficient reference for preservation as argued below—to the implied covenant of good faith and fair dealing in contract, and the only reference relied on by this Court to find preservation of that issue, in Erskine’s directed verdict motion, which Crenshaw won. Therefore, when Crenshaw made the argument he was neither the aggrieved, nor the losing, party.

The logic that a party cannot preserve for appeal an argument made in a motion won by that party is made clear by considering the illogical outcome of allowing a party to do so. To preserve the argument a party must first try to convince the trial court that it “ruled wrongly.” *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422; 526 S.E.2d 716, 724 (2000). To find the issue of the implied covenant of good faith and fair dealing preserved as made in a motion won by

Crenshaw, would deny Crenshaw the opportunity to convince the trial court that it “ruled wrongly” with regard to that argument because he was not the losing party to the motion. Crenshaw could not have preserved the argument by trying to convince the lower court that it had ruled wrongly until he became the losing party, which did not occur until the Court granted a new trial on Erskine’s JNOV motion.

Crenshaw did not raise the issue of breach of the implied duty of good faith and fair dealing in any argument in the JNOV stage, and therefore, the trial court did not consider or rule upon that argument, as required for preservation. In its Final Brief, Erskine argued that Crenshaw did not make any mention of the implied duty of good faith and fair dealing at the JNOV phase, which included: (1) Crenshaw’s response to Erskine’s JNOV motion and in the alternative motion for a new trial; (2) the hearing on Erskine’s JNOV motion; and (3) Crenshaw’s motion to alter or amend the order granting Erskine a new trial. The Court and Crenshaw appear to agree with Erskine on this point since both cite only his mention of a “lack of good faith” in argument on Erskine’s directed verdict motion as constituting the basis for his preservation of the argument (The Court in the Subject Decision p. 9, n. 4, and Crenshaw in his Final Brief). However, since Crenshaw was not yet an aggrieved party at that time, and did not renew, even in a conclusory fashion (even though a conclusory fashion is not sufficient) his argument regarding “a lack of good faith” in any of these proceedings, he has not preserved that argument for appeal and it was error to consider it.

- B. Assuming *arguendo* that Crenshaw’s reference to a “lack of good faith” made before Crenshaw became an aggrieved party is sufficient to preserve the argument, that statement lacks the requisite specificity for the trial court to have considered the argument and the trial court did not rule on that issue. Therefore, the Court’s reliance on it for preservation of Crenshaw’s implied covenant of good faith and fair dealing argument is a misapprehension of the standards for preservation.**

As stated in the Subject Decision, “[i]t is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.” *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). “[A]n objection must be sufficiently specific to inform the trial court of the point being urged by the objector.” *Id.* For an issue to be sufficiently specific it must be “sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge.” *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) (citations omitted) (finding that the appellant’s citation to policy favoring arbitration was a “general acknowledgment of a policy favoring arbitration [which] is a far cry from a specifically articulated [Federal Arbitration Act] preemption argument”) *id.* at 468, 644.

Crenshaw’s attorney’s statement that “it shows a lack of good faith” is a far cry from a specifically articulated argument on the implied covenant of good faith and fair dealing. The “good faith” statement is buried at the end of a lengthy directed verdict motion argument that did not discuss a lack of good faith at all (other than Crenshaw’s attorney stating it in a conclusory fashion) and instead, and rightly, almost singularly focused on the dispositive issue—whether Crenshaw complied with the one obligation he had under the alleged contractual procedure to request a hearing on the grounds of his termination. The lengthy argument on Erskine’s directed verdict motion included the trial court asking Crenshaw’s attorneys some version of these questions related to this central issue: (1) whether Crenshaw was obligated to request a hearing under the alleged policy; (2) whether Crenshaw in fact requested a hearing, which Crenshaw’s attorney stipulated that he did not do (R. p. 750); and (3) and if he did not request a hearing how Crenshaw can avoid this breach of his own. The Court addressed these questions regarding Crenshaw’s own breach no fewer than 13 times during the directed verdict argument. During the directed verdict

argument the trial judge took a lunch break and tasked Crenshaw's attorney with answering the question ". . . why wasn't that [hearing] pursued [by Crenshaw] and if not is that a waiver." (R. p. 743-744.) After the lunch break, the trial court again asked these questions of Crenshaw several times, and near the end of the lengthy hearing, the trial court asked yet again "Y'all were alleging that the college was not following the terms of their obligations under the faculty manual. That has been y'all's case. Why do they have to follow it and in this one sentence clearly was not followed [by Crenshaw]. Why does that, how you get over that?" (R. p. 748.) Crenshaw's attorney responded with several arguments—the same arguments he had made multiple times before in answer to similar questions by the trial court during the directed verdict hearing—which were, in order: (1) that the requirement that Crenshaw request the hearing was unclear; (2) they were in two stages of the dismissal process at the same time; (3) the obligation that Crenshaw request a hearing was not reasonable because he was rushed to decide whether to request the hearing; (4) Crenshaw was terminated, and then finally (5) "And so, it shows a lack of good faith, the fact that they are jumbling these stages and give him two days to respond or three, I guess, less than three days, weekend days." (R. p. 788-749.) Although the directed verdict arguments continued after that, Crenshaw did not use the term "good faith" or "bad faith" or any other term that might implicate the implied covenant of good faith and fair dealing, before, or after this one mention at the end of the long argument.

Crenshaw's addition of the phrase "lack of good faith" to describe the same arguments he had made during the directed verdict motion several times already without using that term, and in response to repeated questions by the trial court, and the timing of that phrase near the end of a lengthy argument in which the trial court noted its "concern" over Crenshaw's failure to request a hearing (R. p. 743), was not sufficiently clear to bring into focus for the trial court that he was

arguing a breach of the implied covenant of good faith and fair dealing. Instead, in context of the entire directed verdict argument, the comment was at best a last ditch effort to add something new to arguments already made but that did not satisfy the trial court, and at worst, was a throw away statement. Under either reason Crenshaw's attorney made the statement, it lacked the required specificity to notify the trial court that it was an argument that needed to be addressed as shown by the fact that the trial court did not acknowledge, much less address, the argument during Erskine's directed verdict argument or any time thereafter. Crenshaw's off-handed mention of a "lack of good faith" is not specific enough to preserve that argument for appeal.

Even if Crenshaw's mention of "a lack of good faith" is deemed to be specific enough, it was not preserved for appellate review because it was never ruled upon by the trial court. The trial court's denial of Erskine's directed verdict motion does not qualify as a ruling because, as previously stated, it was a ruling in Crenshaw's favor, and leaves nothing for Crenshaw to appeal. The trial court made two rulings after Crenshaw's "lack of good faith" comment, both of which make plain that it never addressed the issue, and Crenshaw did not ask the trial court to do so. The trial court's first ruling was an order granting Erskine a new trial on its motion for JNOV or in the alternative for a new trial. In the hearing on Respondent's JNOV motion, Appellant did not make any mention of the term "good faith" or any other argument remotely related to the implied covenant of good faith and fair dealing in contract. Instead, Appellant argued that under the standard for JNOV, there was evidence to support the jury's verdict. (R. pp. 800-801.) In granting a new trial at that same hearing, the trial court properly focused on the only breach of contract issue argued in the directed verdict and JNOV motion, which was whether Appellant breached the alleged contract by not fulfilling his obligation to request a hearing in writing.

"I reviewed my notes of the facts, both memoranda. And I had very concerns, I mean I talked to y'all in-chambers about my concern

about the lack of the hearing. The hearing was set, there was no, no communication at all back to the college. The President even testified that he went to the hearing location and sat there all morning and nothing happened. And that, those facts were not controverted in any way, they were consistent. The statement for grounds of dismissal was noticed to the employee of a hearing, let us know back if a hearing is necessary, desired. No response at all. No appearance at all. And I think that fact is missing. And I think it is appropriate that I grant a new trial as requested.” (R. p. 802.)

Crenshaw and Erskine both made Rule 59(e), SCRCP motions as a result of this ruling—Crenshaw’s requesting the trial court reinstate the jury verdict and Erskine’s for clarification of whether its JNOV motion had been denied in order to preserve that issue for appeal, if necessary. Neither party addressed the implied covenant of good faith and fair dealing in their Rule 59(e) motions, particularly Crenshaw, who did not even use a term implying an argument on that issue, e.g. “good faith” or “bad faith,” much less make an argument about whether Erskine had breached the implied covenant of good faith and fair dealing. “[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion.

A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.”

*Elam v. S.C. DOT*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Crenshaw’s Rule 59(e) motion was the proper time for Crenshaw to raise the breach of implied covenant of good faith and fair dealing as not having been properly considered by the trial court. By not raising it then, the Court’s second relevant ruling, its order vacating its order for a new trial and granting JNOV to Erskine, did not rule upon the implied covenant of good faith and fair dealing argument. Therefore, there is no ruling from the trial court on Crenshaw’s implied covenant of good faith and fair dealing

argument and it was error for this Court to consider that argument since it was not properly preserved.

Moreover, Crenshaw's failure to argue that the trial court should have ruled on its implied covenant of good faith and fair dealing argument in its Rule 59(e), SCRCP motion results in waiver of that objection as not raised timely. Issues must be raised by objection in a timely manner and failure to timely object results in a waiver of the objection. *State v. King*, 334 S.C. 504, 510, 514 S.E.2d 578, 581 (1999).

**C. The Court overlooked or misapprehended that Crenshaw did not properly preserve an implied covenant of good faith and fair dealing argument because that was not a part of his case and he cannot attack the decision below using a new theory on appeal.**

“[A] party cannot, when a cause is brought up for appellate review, assume an attitude inconsistent with or different from that taken by him at the trial, and [. . .] the parties are restricted to the theory on which the cause was prosecuted or defended in the court below.” *White v. Livingston*, 231 S.C. 301, 307, 98 S.E.2d 534, 537 (1957). The term “good faith”—much less a direct reference to the principle of the implied covenant of good faith and fair dealing—does not appear anywhere in Crenshaw's Complaint. (R. pp. 9-26.) Crenshaw has identified only one possible mention of this term at trial (App. Reply Br. p. 4.) The trial court did not instruct the jury on the implied covenant of good faith and fair dealing and Crenshaw did not object to the lack of such an instruction. (R. pp. 775-792.) Crenshaw pled and tried his case on various theories of how Erskine breached the alleged contract, none of which, were that its breach(es) violated the implied covenant of good faith and fair dealing. He, therefore cannot now, argue that theory—much less hinge almost his entire appeal on it as he does—and it is error to allow him to do so, and to decide the case on such an argument.

**II. The Court overlooked and misapprehended that Crenshaw’s breach of the contract precludes him from prevailing on his breach of contract claim regardless of whether Erskine breached the implied covenant of good faith and fair dealing, although Erskine denies breaching that covenant.**

**A. Breach of the implied covenant of good faith and fair dealing does not excuse Crenshaw’s breach.**

The Court erred by holding that even if Erskine breached the implied covenant of good faith and fair dealing—which Erskine denies—that such breach is grounds for overturning the trial court’s JNOV. “There exists in every contract an implied covenant of good faith and fair dealing. *Adams v. G.J. Creel and Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995). However, “the implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract.” *RoTec Services, Inc. v. Encompass Services, Inc.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004). Since the implied covenant of good faith and fair dealing is not independent of the breach of contract cause of action, it is “treated . . . as merely another term of the contract at issue. . .” *Id.* And, as just another term of the contract, even if Erskine breached the implied duty of good faith and fair dealing, that breach would not excuse Crenshaw from meeting his obligations under the contract. Or, as the Supreme Court of South Carolina put it when addressing the exact situation presented in this case—a party who did not himself perform under the contract (Crenshaw) alleging breach of the implied covenant of good faith and fair dealing by the other party (Erskine),

“[t]he Court of Appeals affirmed the trial court’s determination that Owner could not proceed on his implied covenant of good faith and fair dealing claim because he was in default on the contract. *See Parks v. Lyons*, 219 S.C. 40, 48, 64 S.E.2d 123, 126 (1951) (‘one who seeks to recover damages for breach of a contract, to which he was a party, must show that the contract has been performed on his part, or at least that he was, at the appropriate time, able , ready, and willing to perform it’). . . We conclude the Court of Appeals is correct on this point.”

*Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 487, 514 S.E.2d 126, 135 (2004). Put more succinctly, the Court’s holding that Erskine breached the implied covenant of good faith and fair dealing has no impact on the outcome of Crenshaw’s appeal unless the Court first determines that Crenshaw did not breach the alleged contract by failing to request a hearing, which this Court did not do—it correctly found that Crenshaw did not request the hearing (Ex. A., p. 5)—and for good reason, because there is no disputed fact on that point. Indeed, Crenshaw himself admitted to not requesting the hearing multiple times at trial, and his attorney did the same during Erskine’s directed verdict motion at the close of all evidence; “I agree there is no question that he didn’t request it . . .” (R. p. 400, line 11-p. 403, line 1; R. p. 653, lines 8-12; R. p. 750, lines 8-9.) There is no dispute of fact on this dispositive point. And, the trial court correctly found that the undisputed evidence is that Crenshaw never requested a hearing as he was required to do under the unambiguous terms of the contract. Therefore, even if Erskine breached the implied covenant of good faith and fair dealing, that breach would not excuse Crenshaw’s own breach since the covenant of good faith is merely another term of the contract, and Crenshaw’s breach makes the trial Court’s order granting JNOV to Erskine correct. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 487, 514 S.E.2d 126, 135 (2004).

**B. Erskine did not breach the implied covenant of good faith and fair dealing.**

The Subject Decision finds that Erskine breached the implied covenant of good faith and fair dealing in all seven ways alleged by Crenshaw. (*See* Ex. A, p. 8.) The Court overlooked or misapprehended that Erskine at all times acted reasonably in its dealings with Crenshaw, specifically including its termination of his employment. The facts show that Erskine complied with the procedures in the Faculty Manual for terminating a tenured faculty member and did so in good faith, indeed giving Crenshaw every opportunity to avoid the eventual outcome.

**III. Regarding the Court’s holding that “[b]y submitting the special verdict form to the jury, without objection, the parties agreed it was a question of fact as to whether the contract was breached,” the Court overlooked and misapprehended that: (A) Crenshaw did not present on appeal, and therefore abandoned, this argument and that it is thus not before this Court to be decided; and (B) that the construction of an unambiguous contract is a question of law for the court.**

**A. Crenshaw did not present on appeal, and therefore, abandoned, the argument that “[b]y submitting the special verdict form to the jury, without objection, the parties agreed it was a question of fact as to whether the contract was breached.”**

The Supreme Court of South Carolina has held “that the Court of Appeals may not decide an issue neither presented to the circuit court nor raised by proper exception on appeal.” *Connolly v. People’s Life Ins. Co.*, 299 S.C. 348, 352, 384 S.E.2d 738, 740 (1989) (citations omitted). “The Court of Appeals itself has recognized that issues either not raised to the trial court or by proper exception on appeal present no question for appellate determination.” *Id.*; *cf. Jinks v. Richland County*, 355 S.C. 341, 345, 585 S.E.2d 281, 283, n. 3 (2003) (“In its Statement of Issues on Appeal, County also asserts the lower court erred by failing to grant its motions for a directed verdict and judgment notwithstanding the verdict on the basis of sovereign immunity. Since County failed to argue this issue in the body of its brief, the issue is deemed abandoned”) (internal citations omitted). Crenshaw did not raise the issue of whether an unobjected-to special verdict form constitutes an agreement by the parties to the issue of breach of contract being a question of fact. And, therefore, this issue was not before, and should not have been decided by, this Court.

In the Subject Decision the Court describes Crenshaw’s special verdict form argument as, “Crenshaw asserts a jury verdict based on a special verdict form precludes a grant of JNOV.” (Ex. A, p. 7.) This was the extent of Crenshaw’s argument regarding the effect of the special verdict form. Specifically, Crenshaw’s argument regarding the special verdict form was that “[a] jury’s resolution of factual issues in a law case is binding on trial and appellate courts,” thus precluding

review of a jury's determination using a special verdict form. (*See* Appellant's Final Br. pp. 18-19, p. 20 n.1.) This Court correctly noted that had Crenshaw's argument been preserved it would be wrong since "our court rules and case law do not provide that the use of a special verdict form precludes the grant of JNOV." (Ex. A, p. 7.)

However, the Subject Decision finds that the trial court erred in granting Erskine JNOV because "[b]y submitting the special verdict form to the jury, without objection, the parties agreed it was a question of fact as to whether the contract was breached." Crenshaw did not make this argument. He argued only that use of the special verdict form in and of itself precluded a later determination of breach of contract as a matter of law. Therefore, the Court's holding that Erskine's failure to object to the special verdict form converts breach of contract—a matter of law—to one of fact, cannot be based on an argument made by Crenshaw on appeal.

That the Court's holding was not argued by Crenshaw is further highlighted by the contradiction that would result if the Court determined its finding to have been argued by Crenshaw. The Court found Crenshaw's argument that a special verdict form precludes JNOV to be wrong. If this argument was the foundation for the Court's holding that failure to object to a special verdict form precluded JNOV by converting breach of contract to a question of fact, then that holding by the Court would contradict its finding to the contrary in its analysis of Crenshaw's special verdict form argument. Thus, the only way to avoid this contradiction is to properly determine that the Court's holding that Erskine's failure to object to the special verdict form converted breach of contract to a question of fact was not before the Court and therefore cannot be the basis of the Court's decision.

- B. If the Court's holding that "[b]y submitting the special verdict form to the jury, without objection, the parties agreed it was a question of fact as to whether the contract was breached" is deemed properly before the Court, then the Court overlooked that the construction of an unambiguous contract is a question of law for the court to decide.**

The trial court was right to correct the jury's verdict and grant JNOV because breach of contract is a matter of law for the court to decide where, as here, the facts are not in dispute and where there is no evidence that reasonably supports the jury's finding. "[A]n action for breach of contract is an action at law." *Williams v. Riedman*, 339 S.C. 251, 259, 529 S.E.2d 28, 32 (Ct. App. 2000) (citing *Leahy v. Starflo Corp.*, 314 S.C. 546, 548, 431 S.E.2d 567, 568 (1993)). "In an action at law, on appeal of a case tried by a jury, the jurisdiction of this Court extends merely to the correction of errors of law, and a factual finding of the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings." *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976); *conference Williams v. Riedman*, 339 S.C. 251, 259, 529 S.E.2d 28, 32 (Ct. App. 2000) (citations omitted).

This Court erred in the Subject Decision by finding that Erskine agreed that breach of contract was a question of fact for the jury to decide when it did not object to the special verdict form. This finding is in direct conflict with the Court's correct finding in "Law/Analysis" Section I regarding the verdict form. In that section, this Court held,

" . . . our court rules and case law do not provide that the use of a special verdict form precludes the grant of JNOV" citing to Rule 50(b), SCRCP ("Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal question raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict . . .").

Thus, by the Court's own principled reasoning, use of a special verdict form did not preclude Erskine from moving for JNOV after its directed verdict motion was denied and the case was submitted to the jury using a special verdict form. Such a holding would render Rule 50, SCRCP inoperable every time a special verdict form is used, something which is not contemplated in "our court rules and case law."

Therefore, use of the special verdict form, does not infringe on the trial court's right to decide an action at law, as a matter of law, on a JNOV motion. Furthermore, the trial court properly granted Erskine's JNOV motion because there is no evidence which reasonably supported the jury's finding. Instead, the uncontroverted testimony of Crenshaw that he never requested a hearing on the grounds for his termination as required by the alleged contract, along with the stipulation by his counsel during argument on Erskine's directed verdict motion at the close of all evidence, confirm that the jury was wrong to find that Crenshaw did not breach the alleged contract, and therefore that the trial court was right to overturn the verdict and grant the JNOV. There being no error of law in the trial court's JNOV, there can be no reversal on appeal.

**IV. The Court misapprehended the facts and law to determine that the jury could have properly found Erskine to have breached the alleged contract as held in Section II of its "Law/Analysis, "Implied Covenant of Good Faith and Fair Dealing."**

The fact that use of the special verdict form does not convert a breach of contract from an action at law to a question of fact solely for the jury to decide renders the portion of the Court's holding regarding what the jury might have decided about the contract inapplicable. The question was one of law for the trial court to decide and it did so without committing any error of law. However, for the sake of issue and argument preservation, Erskine will address that portion of the holding.

**A. The Court misapprehended and overlooked the unambiguous language of the alleged contract regarding Crenshaw's obligation to request a hearing in writing to review Erskine's grounds for termination of his employment.**

The Subject Decision found that Crenshaw's one obligation under the contract was ambiguous through its statement that "[t]he jury as fact finders, could have found the language in the Manual and letter were confusing as to whether Crenshaw was required to specifically request or waive a hearing that had already been set." To start, the only document which Crenshaw alleges creates a contract is the Faculty Manual.<sup>3</sup> (R. p. 21-24.) And, therefore, the only language at issue is that contained in the Faculty Manual, which states,

"The President will inform the tenured faculty member in writing of the dismissal and the grounds for it. The President will also advise the tenured faculty member of the right to a hearing before a faculty committee and will indicate the time and place of the hearing. . . The tenured faculty member will reply in writing to the President stating whether a hearing is desired, and the reply shall be not less than two weeks before the date set for the hearing."

(R. p. 1153.) This language is not ambiguous. It states that Crenshaw had a right to a hearing on the grounds for his termination and that if he wanted the hearing he had to notify the President in writing that he wanted the hearing. Having a right to a hearing and having to exercise that right in order to use it do not conflict with one another and are not ambiguous.

Pursuant to the Faculty Manual, the President notified Crenshaw that he had a right to a hearing, the time and place for the hearing, and that Crenshaw must request the hearing in writing not less than two weeks before the date set for the hearing. The President's letter restates this procedure by saying that Crenshaw has the right to the hearing unless he waives, i.e. he does not request it. This reference to a waiver does not make the requirement ambiguous. If anything it

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<sup>3</sup> Erskine's arguments in its Final Brief regarding the President's letter outlining the procedure as stated in the Faculty Manual are simply that the President's letter accurately restates the procedures outlined in the Faculty Manual.

helps to clarify that if Crenshaw did not request the hearing to which he was entitled, in writing, then he was deemed to have waived his right to the hearing. This meaning is straightforward. Crenshaw was required to request a hearing in order to exercise his right to it, and if he did not, then he waived the hearing. The fact that the procedure requires the hearing be scheduled has no effect on the right to the hearing and the requirement that Crenshaw request it. He has a right to a hearing. It is scheduled for a date and time. Crenshaw must exercise his right by telling the President in writing that he wants the hearing. If he doesn't, then there is no hearing. If he does, then the hearing takes place.

The analogy of this process to the right to vote clarifies that it is not ambiguous. If a person meets certain requirements such as age (in this case tenure) then that person has a right to vote at the date and time set for election (just as the time and date of a hearing on dismissal was set). However, the person must exercise his right to vote by registering to vote, i.e. stating his intention to exercise his right to vote (in this case notifying the President that the hearing is desired). If the person does not register to vote, then he cannot exercise his right to vote, and has waived his right to vote for that election. Erskine's procedure is not foreign, it is not uncommon, it is not ambiguous. Crenshaw failed to follow the simple procedure of requesting a hearing and thereby waived his right to the hearing just as if he had waived his right to vote by not registering.

- B. The Court overlooked or misapprehended facts and their impact, in finding that the jury could have found that Crenshaw did not breach his obligations to Erskine because the offer of early retirement was still pending when the President sent Crenshaw his letter outlining the grounds for dismissal and still pending (for one more day) on the date of the scheduled hearing on Crenshaw's dismissal.**

The Subject Decision overlooks or misapprehends that Crenshaw's only obligation under the alleged contract was to reply to the President in writing and request a hearing. As discussed herein, Crenshaw and his attorney have admitted that he breached this obligation.

Crenshaw and President Norman agreed that Crenshaw would choose one of the three options that they agreed to in their August 6<sup>th</sup> meeting by an August 8<sup>th</sup> deadline. The Subject Decision correctly points out that Crenshaw failed to choose one of those options by the deadline he agreed to. (Ex. A, p. 5.) Once Crenshaw failed to meet that deadline the Informal Proceedings stage of the termination process ended and President Norman had every right to move into the Formal Proceedings phase, which he did on August 12, by sending Crenshaw the grounds for his dismissal. The Faculty Manual does not specify the timing for moving from Informal Proceedings to Formal Proceedings. Therefore, President Norman's offer of an agreement outlining terms of Crenshaw's early retirement was after, and not a part of, the procedures and did not preclude the rest of the process from proceeding, which President Norman explained in essence to Crenshaw in their email exchanges between August 8 and August 12.

The fact that the 21-day consideration period for the agreement on terms of Crenshaw's early retirement did not expire until one day after the scheduled hearing on the grounds for dismissal is of no import. First, as just explained, Crenshaw had already failed to choose an option for resolving the matter by the agreed-upon deadline, and the Informal Proceedings ended at that time. Second, this finding ignores that the hearing was set "subject to adjustment upon reasonable request." (Ex. A, p. 5.) All Crenshaw had to do was request that the hearing be re-scheduled, which he did not do, and the pending agreement on early retirement did not prevent him from doing that. Third, this finding ignores that President Norman extended Crenshaw's time to consider the agreement by six days (to September 5) and that Crenshaw still never responded to the offer, and that President Norman gave Crenshaw another two days after the deadline before terminating his employment on September 7. (*Id.*) Erskine's early retirement agreement's 21-day consideration period does not excuse Crenshaw's non-performance of his contractual obligation.

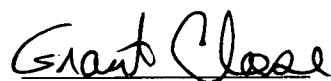
**C. The Court misapprehended or overlooked that Crenshaw did not argue on appeal that any breach by him was immaterial and therefore that ground for reversal is not before this Court.**

Crenshaw did not argue the immateriality of his breach and therefore this Court may not decide that issue. *See Connolly v. People's Life Ins. Co.*, 299 S.C. 348, 352, 384 S.E.2d 738, 740 (1989) (citations omitted) (“the Court of Appeals may not decide an issue neither presented to the circuit court nor raised by proper exception on appeal . . . [t]he Court of Appeals itself has recognized that issues either not raised to the trial court or by proper exception on appeal present no question for appellate determination”); *Jinks v. Richland County*, 355 S.C. 341, 345, 585 S.E.2d 281, 283, n. 3 (2003) (“In its Statement of Issues on Appeal, County also asserts the lower court erred by failing to grant its motions for a directed verdict and judgment notwithstanding the verdict on the basis of sovereign immunity. Since County failed to argue this issue in the body of its brief, the issue is deemed abandoned”) (internal citations omitted). It was error to base any part of the Subject Decision on this issue not before the Court.

**V. Conclusion**

For the foregoing reasons the Court should grant Erskine’s Petition for Rehearing, and substitute the Subject Decision with an opinion affirming the Judgment in Erskine’s favor.

Respectfully submitted this 9<sup>th</sup> day of August, 2018.



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# EXHIBIT A

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

William Crenshaw, Appellant,

v.

Erskine College and David A. Norman, Respondents.

Appellate Case No. 2015-002090

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Appeal From Abbeville County  
Eugene C. Griffith, Jr., Circuit Court Judge

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Opinion No. Op. 5571  
Heard February 14, 2018 – Filed June 27, 2018

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**REVERSED**

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E. Charles Grose, Jr., of Grose Law Firm; and Robert J. Tinsley, Sr. and Robert Jamison Tinsley, Jr., both of Tinsley & Tinsley, P.C., all of Greenwood, for Appellant.

Thomas H. Keim, Jr. and Leland Grant Close, III, both of Ford & Harrison, LLP, of Spartanburg, for Respondents.

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**LOCKEMY, C.J.:** William Crenshaw appeals the trial court's order granting Erskine College's (Erskine) motion for judgment notwithstanding the verdict (JNOV). We reverse.

**FACTS/PROCEDURAL BACKGROUND**

Crenshaw was a tenured professor at Erskine. On September 24, 2010, a student in Crenshaw's English class who had fallen in an athletic team practice earlier that

morning became disoriented and lethargic. Crenshaw—a former paramedic—called Robyn Agnew, Erskine's Vice President for Student Services, to inform her of the situation and requested she call an ambulance. After the ambulance arrived, Crenshaw and members of Erskine's athletic training staff disagreed over whether the student should be transported to the hospital.

Following the incident, Crenshaw and Erskine's Head Athletic Trainer, Adam Weyer, engaged in an email exchange. Crenshaw suggested Erskine scrutinize the athletic department's protocol for handling emergency medical situations. Crenshaw asserted the athletic department's protocol of having student athletes report to athletic trainers before they see doctors endangers students. Crenshaw further alleged the trainers erred in delaying emergency medical transport for the injured student in his class. Weyer accused Crenshaw of "taking the matter into his own hands" and not following athletic department concussion protocol of contacting athletic training personnel before calling for an ambulance.

As a result of the ambulance incident and its aftermath, Weyer filed a grievance against Crenshaw. Weyer accused Crenshaw of violating athletic department protocol and making slanderous remarks both online and in class regarding the athletic training staff. Weyer's grievance was cosigned by Mark Peeler, Erskine's Athletic Director. Gid Alston, the Chair of Erskine's Department of Health and Human Performance, also filed a grievance against Crenshaw. Alston accused Crenshaw of potentially harming the image of the athletic training program by slandering Erskine's athletic trainers.

The grievances were forwarded to Erskine's faculty grievance committee to mediate the dispute. Following a meeting, the committee determined it could not formulate a mediation plan and sent the grievances to Erskine Dean Brad Christie. Weyer, Peeler, and Alston declined Christie's offer to mediate, and the matter was forwarded to Erskine President David Norman for adjudication.

In November 2010, Norman appointed a special faculty grievance committee to help adjudicate the matter. Norman requested the committee assess Crenshaw's behavior in handling the emergency situation and his professionalism and collegiality during and following the situation. Crenshaw gave a statement to the committee, denied the allegations against him, and agreed to answer any questions. Following two meetings, the committee determined it was unable to help resolve the situation and returned the matter to Norman. Thereafter, Norman began the process of terminating Crenshaw's employment based on (1) Crenshaw's conduct

during and after the ambulance incident<sup>1</sup>; (2) Crenshaw's "obstructionist actions" before the grievance committee<sup>2</sup>; and (3) Crenshaw's disparaging remarks about Erskine on his blog<sup>3</sup>.

Pursuant to Erskine's Faculty Manual (the Manual), the procedure for terminating a tenured faculty member's employment for cause begins with "Preliminary Proceedings." Preliminary proceedings require the President to seek to resolve the matter with the faculty member in private and states if the matter is not resolved by mutual consent then the President will formulate a statement describing the grounds for dismissal.

The second step in the procedure is titled "Formal Proceedings." The formal proceedings step states:

The President will inform the tenured faculty member in writing of the dismissal and the grounds for it. The President will also advise the tenured faculty member of the right to a hearing before a faculty committee and will indicate the time and place of the hearing. In fixing the time and place of the hearing, the President will allow sufficient time for the tenured faculty member to prepare a defense. The President will inform the tenured faculty member of the procedural standards set forth here.

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<sup>1</sup> Norman found Crenshaw attempted to assert control over a situation in which his authority was subordinate to the EMS personnel and Christie.

<sup>2</sup> Norman found Crenshaw exhibited "bullying behavior" and "contempt" for the committee. Norman noted Crenshaw's actions before the committee evidenced a pattern of refusing to respect the legitimate authority of the committee, and a volatility that created a hostile working environment.

<sup>3</sup> Norman found Crenshaw demonstrated his disloyalty to Erskine by posting the following statement on his blog:

I think this site does accomplish three things. First . . . This is a means to an end. The end are [sic] the other two accomplishments: second, people are encouraged to quit donating to Erskine and to quit sending their kids until all this is straightened up.

The tenured faculty member will reply in writing to the President stating whether a hearing is desired, and the reply shall be not less than two weeks before the date set for the hearing.

Crenshaw acknowledged these procedures were part of the Manual, which constitutes the contract at issue.

Crenshaw proceeded to teach during the spring 2011 semester. In August 2011, Norman initiated the for cause termination process in the Manual. Norman wrote a letter to Crenshaw on August 5, 2011, introducing the preliminary proceedings. Norman then met with Crenshaw on August 6, 2011, in an attempt to resolve the matter. Norman began the meeting by reading the August 5 letter to Crenshaw, which stated Norman's hope they could resolve the issues by mutual consent, but if they could not, then Norman would provide a statement describing the grounds for Crenshaw's dismissal. Norman offered Crenshaw conditions, consisting of three sets of apologies, which if met would allow him to remain employed. Crenshaw and Norman also discussed severance pay in exchange for Crenshaw's early retirement. Crenshaw and Norman agreed Crenshaw would discuss the early retirement option with his wife and make a decision by 5:00 p.m. on August 8, 2011. The meeting ended with Norman outlining Crenshaw's three options: (1) agree to apologize; (2) go to step two, i.e., formal proceedings for termination at which Norman would outline the grounds for termination; or (3) accept the early retirement offer.

Just before the agreed-upon deadline to decide between the three options, Crenshaw informed Norman that he and his attorney were willing to discuss the issue of his early retirement. Norman was unsure whether this response was a yes or no but treated it as acceptance of the offer. He responded he would draft an agreement for the early retirement and a proposed announcement for Crenshaw's approval to prompt a commitment from Crenshaw if he was in fact serious about retiring.

The next day, Norman sent Crenshaw a draft agreement for an early retirement payment and a proposed announcement of Crenshaw's retirement. Crenshaw responded that announcing his retirement was premature because he was still considering the severance agreement, which provided up to twenty-one days to consider. Norman responded that Crenshaw could indeed take the entire twenty-one day period to consider the early retirement agreement. However, because

Norman had already informed Crenshaw in the August 6 meeting Crenshaw would not be teaching that semester, he provided Crenshaw with an alternative announcement to Erskine's faculty and staff that Crenshaw would not be teaching in the fall and that he and Norman were discussing his future with Erskine. Crenshaw responded that he disagreed with his removal from the classroom for the semester. Crenshaw's response also confirmed he had not yet made a decision on the options he agreed to in the August 6, 2011 meeting.

Because Crenshaw failed to choose one of the agreed-upon options by the fourth day after the deadline, Norman moved to formal proceedings and sent Crenshaw a statement of the grounds for his dismissal on August 12, 2011. Norman's letter informed Crenshaw of his right to a hearing, stating:

You have a right under College policy to a full hearing before a faculty committee. Unless you waive your right to a hearing, it shall be held on August 29th at 9 [a.m.] in the Chestnut Room. This schedule is subject to adjustment upon reasonable request. As also stated in the handbook, you will reply to this letter in writing, stating whether this hearing is desired. This reply shall not be less than two weeks before the date set for the hearing.

Crenshaw did not request a hearing. Norman never appointed a faculty committee for the termination hearing but waited for Crenshaw at the appointed time and place for the scheduled hearing. Crenshaw did not appear.

While the formal proceedings were ongoing, the timeline for the offer of early retirement was also running. The original twenty-one day consideration period expired on August 30, 2011, without an acceptance or rejection of the offer by Crenshaw. Norman extended Crenshaw's time to respond to the early retirement offer by six days with a new deadline of September 5, 2011, and communicated this to Crenshaw's attorney. Crenshaw did not respond to the early retirement offer by September 5, 2011. After the extended deadline to accept the early retirement offer expired, and because Crenshaw had not made a timely demand for the hearing, Norman terminated Crenshaw's employment on September 7, 2011.

On June 6, 2012, Crenshaw filed a complaint against Erskine and Norman alleging (1) wrongful discharge, (2) breach of contract, and (3) intentional infliction of emotional distress. Erskine and Norman subsequently filed an answer denying Crenshaw's allegations.

On March 28, 2014, Erskine and Norman filed a motion for summary judgment on all of Crenshaw's claims. The trial court denied the motion. Prior to trial, Erskine and Norman filed a second motion for summary judgment on Crenshaw's wrongful discharge claim. During arguments on the motion, Crenshaw conceded his wrongful discharge claim was the same as the breach of contract claim and the two claims were merged.

A jury trial was held June 8 through 11, 2015. At the close of Crenshaw's case, Erskine and Norman moved for directed verdicts on all of Crenshaw's claims. The trial court granted the directed verdict motions on all claims as to Norman but denied the motions as to Erskine. At the close of Erskine's case, Erskine renewed its directed verdict motions, and the court granted Erskine a directed verdict as to the intentional infliction of emotional distress claim. Thereafter, the breach of contract claim was submitted to the jury. The jury, by special verdict form, found (1) Crenshaw did not breach his obligation under the contract and (2) Erskine did breach its obligation under the contract. The jury awarded Crenshaw \$600,000 in damages.

Following the verdict, Erskine filed a motion for JNOV and in the alternative for a new trial. Following a hearing, the trial court granted Erskine a new trial. Erskine subsequently filed a Rule 59(e), SCRCF, motion seeking clarification as to whether the court had denied the JNOV motion in order to preserve the issue for appeal. Crenshaw also filed a Rule 59(e) motion seeking to have the jury's verdict reinstated.

On August 24, 2015, the trial court issued an order (1) vacating its prior order granting a new trial and (2) granting Erskine's JNOV motion. The court found Crenshaw failed to comply with the terms of the contract and request a hearing; therefore, he could not recover on a breach of contract claim in which he failed to fulfill the obligations of the contract and consequently breached the contract. The court denied Crenshaw's Rule 59(e), SCRCF, motion. Crenshaw appeals.

## **STANDARD OF REVIEW**

When reviewing the trial court's ruling on a directed verdict or JNOV motion, this court must apply the same standard as the trial court "by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 27-28, 602 S.E.2d 772, 782 (2004). The trial court must deny a motion for a directed verdict or JNOV if the evidence yields

more than one reasonable inference or its inference is in doubt. *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994). Moreover, "[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). In deciding such motions, "neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence." *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000). This court will reverse the trial court's ruling only if no evidence supports the ruling below. *RFT Mgmt. Co. v. Tinsley & Adams LLP*, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012).

## LAW/ANALYSIS

### I. Verdict Form

Crenshaw argues the trial court erred in granting Erskine's JNOV motion. Crenshaw asserts a jury verdict based on a special verdict form precludes a grant of JNOV. We find this issue unpreserved.

Although Crenshaw maintains he asked the trial court to give deference to the jury's verdict, he did not specifically assert the use of a special verdict form precluded the grant of JNOV. Accordingly, this argument is not preserved for our review. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *id.* ("[A]n objection must be sufficiently specific to inform the trial court of the point being urged by the objector.").

Even assuming this issue was preserved, we note our court rules and case law do not provide that the use of a special verdict form precludes the grant of JNOV. *See* Rule 50(b), SCRPC ("Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict . . . .");

*Smith v. Ridgeway Chemicals, Inc.*, 302 S.C. 303, 305, 395 S.E.2d 742, 743 (Ct. App. 1990) ("[A JNOV] motion is available to one suffering an adverse ruling of

the jury only when the same issues were submitted to the judge at the directed verdict stage.").

## **II. Implied Covenant of Good Faith and Fair Dealing**

Crenshaw argues Erskine breached the implied covenant of good faith and fair dealing by (1) suspending Crenshaw; (2) failing to identify any grounds for terminating Crenshaw during the August 6th meeting; (3) failing to comply with the preliminary proceedings provision in the Manual; (4) terminating the preliminary proceedings prior to the expiration of the 21-day consideration period for the offer of early retirement; (5) failing to comply with the formal proceedings; (6) failing to give Crenshaw a meaningful opportunity for a fair hearing; and (7) failing to give Crenshaw sufficient time to prepare a defense. We agree.

"There exists in every contract an implied covenant of good faith and fair dealing." *Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995).

The Manual provides "[t]he President will . . . advise the tenured faculty member of the right to a hearing before a faculty committee and will indicate the time and place of the hearing . . . . The tenured faculty member will reply in writing to the President stating whether a hearing is desired . . . ." This requirement was also specified in the statement of grounds for dismissal and its cover email sent by Norman to Crenshaw. The letter outlining the grounds for dismissal stated:

You have a right under College policy to a full hearing before a faculty committee. Unless you waive your right to a hearing, it shall be held on August 29th at 9 a.m. in the Chestnut Room. This schedule is subject to adjustment upon reasonable request. As also stated in the handbook, you will reply to this letter in writing, stating whether this hearing is desired. This reply shall not be less than two weeks before the date set for the hearing.

The jury, by special verdict form, was asked (1) whether Crenshaw breached his obligation under the contract and (2) whether Erskine breached its obligation under the contract. The jury found Crenshaw did not breach his obligation and Erskine did breach its obligation. Thereafter, the trial court granted Erskine's JNOV motion, finding Crenshaw failed to comply with the terms of the contract and request a hearing; therefore, he could not recover on a breach of contract claim

where he failed to fulfill the obligations of the contract and consequently breached the contract.

We find the trial court erred in granting Erskine's JNOV motion. By submitting the special verdict form to the jury, without objection, the parties agreed it was a question of fact as to whether the contract was breached. The jury, as fact finders, could have found the language in the Manual and letter were confusing as to whether Crenshaw was required to specifically request or waive a hearing that had already been set. The jury could have also determined Crenshaw did not breach his obligations to Erskine because the offer for early retirement was still pending when Crenshaw received Norman's letter and remained pending until the day after the scheduled hearing. Finally, even assuming the contract required a reply from Crenshaw, the jury could have determined Crenshaw's breach was immaterial. Accordingly, we reverse the grant of JNOV.<sup>4</sup> See *Strange*, 314 S.C. at 429-30, 445 S.E.2d at 440 (holding the trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt); *Gastineau*, 331 S.C. at 568, 503 S.E.2d at 713 ("A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict.").

## **CONCLUSION**

The trial court's order granting Erskine's motion for JNOV is

**REVERSED.**

**WILLIAMS and KONDUROS, JJ., concur.**

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<sup>4</sup> Erskine argues Crenshaw's argument regarding a breach of the implied duty of good faith and fair dealing is not preserved because he failed to raise it in either (1) his response to Erskine's motion, (2) his arguments at the hearing on Erskine's motion, or (3) his motion to alter or amend the order granting Erskine a new trial. Crenshaw asserts he argued throughout the trial and during the post-trial proceedings that Erskine violated its duty of good faith to Crenshaw. We find Crenshaw's argument is preserved. While he did not explicitly cite case law regarding the implied covenant of good faith and fair dealing, Crenshaw did assert at trial Erskine violated the duty of good faith by jumping between the stages of termination: "[I]t shows a lack of good faith, the fact that they are jumbling these stages and give him two days to respond or three, I guess, less than three days, weekend days."

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY  
Eugene C. Griffith, Jr., Circuit Court Judge

\_\_\_\_\_  
Court of Appeals Case No. 2015-002090  
\_\_\_\_\_

**RECEIVED**  
AUG 10 2018  
SC Court of Appeals

William Crenshaw ..... Appellant,

v.

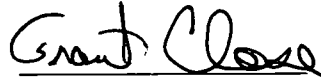
Erskine College and David A. Norman ..... Respondents.

CERTIFICATE OF SERVICE OF  
PETITION FOR REHEARING

I certify that I have served the Petition for Rehearing on August 9, 2018 by placing  
a copy in the United States Mail, postage prepaid, addressed to:

E. Charles Grose, Jr.  
The Grose Law Firm, LLC  
404 Main Street  
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August 9, 2018

**VIA FEDEX OVERNIGHT**

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

**RECEIVED**  
AUG 10 2018  
SC Court of Appeals

Re: William Crenshaw v. Erskine College and David A. Norman  
Court of Appeals Case No. 2015-002090

Dear Ms. Kitchings:

Please find enclosed, the original and six copies of Respondents' Petition for Rehearing, along with the Certificate of Service thereof. Also enclosed, is the \$25.00 filing fee for this Petition.

If you have any questions regarding Respondents' Petition, or would like to discuss it further, please do not hesitate to contact me.

With highest regards I remain,

Very truly yours,



L. GRANT CLOSE III

LGC

cc: E. Charles Grose, Jr., Esquire  
Robert J. Tinsley, Sr., Esquire  
R. Jamison Tinsley, Jr., Esquire

WSACTIVELLP:8588688.1