

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM ABBEVILLE COUNTY  
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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Circuit Court Case No. 2012-CP-01-00158

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Opinion No. 5571 (S.C. Ct. App. Filed June 27, 2018)  
Appellate Case No. 2015-002090

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William Crenshaw,

v.

Erskine College and David Norman,

Respondent,

Petitioners.

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**S.C. SUPREME COURT**

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In The Court of Appeals

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**FINAL BRIEF OF APPELLANT**

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## TABLE OF CONTENTS

Table of Contents .....	1
Table of Authorities .....	2
Question Presented.....	3
Statement of the Case.....	4
Statement of Facts.....	6
Argument	
The trial court judge erred by granting Erskine College a judgment notwithstanding the verdict, finding that Dr. William Crenshaw breached his contractual obligation to Erskine College, even though the jurors, by special verdict form, expressly found (1) Dr. Crenshaw did not breach his obligation under the agreement and (2) Erskine College did breach its obligation under the agreement.....	18
Standard of Review.....	18
Discussion.....	19
Conclusion .....	25

## TABLE OF AUTHORITIES

### Cases

<i>Adams v. G.J. Creel &amp; Sons, Inc.</i> , 320 S.C. 274, 465 S.E.2d 84 (1995).....	21
<i>Eldeco, Inc. v. Charleston Cty. Sch. Dist.</i> , 372 S.C. 470, 642 S.E.2d 726 (2007).....	18
<i>Erickson v. Jones St. Publishers, L.L.C.</i> , 368 S.C. 444, 629 S.E.2d 653 (2006).....	19, 20
<i>Hilton Head Island Realty, Inc. v. Skull Creek Club</i> , 287 S.C. 530, 339 S.E.2d 890 (Ct. App. 1986).....	18
<i>Jones v. Builders Inv. Grp., LLC</i> , 415 S.C. 321, 781 S.E.2d 737 (Ct. App. 2015).....	18
<i>Parker v. Byrd</i> , 309 S.C. 189, 420 S.E.2d 850 (1992).....	21
<i>S. Carolina Dep't of Transp. v. First Carolina Corp. of S.C.</i> , 372 S.C. 295, 641 S.E.2d 903 (2007).....	20
<i>Shupe v. Settle</i> , 315 S.C. 510, 445 S.E.2d 651 (Ct. App. 1994).....	18
<i>Tharpe v. G.E. Moore Co.</i> , 254 S.C. 196, 174 S.E.2d 397 (1970).....	21
<i>Townes Assocs., Ltd. v. City of Greenville</i> , 266 S.C. 81, 221 S.E.2d 773 (1976).....	19, 20

### Rules

Rule 49, SCRCP .....	20
Rule 59(e), SCRCP .....	5

## QUESTIONS PRESENTED

Did the trial court judge err by granting Erskine College a judgment notwithstanding the verdict, finding that Dr. William Crenshaw breached his contractual obligation to Erskine College, even though the jurors, by special verdict form, expressly found (1) Dr. Crenshaw did not breach his obligation under the agreement and (2) Erskine College did breach its obligation under the agreement?

## STATEMENT OF CASE

This appeal is from the circuit court's order granting Defendant's motion for judgment notwithstanding the verdict and denying Plaintiff's Rule 59(e), SCRCF motion filed August 24, 2015. R. 6-8. William Crenshaw ("Dr. Crenshaw") commenced this action against Erskine College ("Erskine") and David A. Norman ("President Norman" or "Dr. Norman") by filing the summons and complaint on June 6, 2012, and subsequently serving both. R. 9-26. The complaint alleged causes of action for wrongful discharge, breach of contract, and intentional infliction of emotional distress. Complaint, R. 18-26. Erskine and President Norman filed an answer that denied Dr. Crenshaw's allegations and raised several affirmative defenses. R. 27-40.

Erskine and President Norman filed a motion for summary judgment regarding all of Dr. Crenshaw's claims after the parties had engaged in extensive discovery. R. 41-76. The circuit court denied summary judgment. R. 1-3. Just prior to trial, Erskine and President Norman filed a second summary judgment motion regarding Dr. Crenshaw's wrongful discharge claim. R. 77-84. The circuit court took up this matter prior to the trial beginning on June 8, 2015. R. 117, ll. 1-19. The circuit court merged Dr. Crenshaw's breach of contract and wrongful discharge claims. R. 127, ll. 4-20.

At the close of Dr. Crenshaw's case-in-chief, Erskine and President Norman made directed verdict motions on all his claims. R. 445, ll. 12-15. The circuit court granted the motions as to President Norman in his individual capacity but denied the motions as to Erskine. R. 450, ll. 3-16; R. 456, l. 23-R. 457, l. 15. At the close of Erskine's case-in-chief, Erskine renewed its motions for directed verdict on Dr. Crenshaw's remaining claims by arguing with respect to the breach of contract claim that Erskine and Dr.

Crenshaw did not have a contract but if they did the circuit court should direct a verdict in Erskine's favor because Dr. Crenshaw violated the contract. R. 733, l.1-R. 737, l. 5. The circuit court granted Erskine a directed verdict with respect to the intentional infliction of emotional distress claim but denied the motion for the breach of contract claim. R. 741, l. 15-R. 752, l. 6.

After deliberating, the jury returned a verdict. The first question asked "Did Dr. William Crenshaw breach his obligation under the agreement?" and the jury answered, "No." The second question asked "Did Erskine College breach its obligation under the agreement?" and the jury answered, "Yes." The third question asked "Please state amount of damages, if any, sustained for this breach," and the jury answered six hundred thousand dollars (\$600,000.00). R. 4.

Following the trial, Erskine filed a motion for JNOV or in the alternative for a new trial. R. 85-91. At the conclusion of a hearing on the motion, the circuit court granted Erskine's motion for a new trial. R. 5. Each party filed a motion to alter or amend pursuant to Rule 59(e), SCRCF. R. 102-107. On August 24, 2015, the circuit court issued the order granting Erskine's motion for JNOV and denying Dr. Crenshaw's motion to alter or amend. R. 6-8. After receiving notice of the order on August 27, 2015, Dr. Crenshaw served his notice of appeal on Erskine on September 22, 2015.

This brief follows.

## STATEMENT OF FACTS

On September 24, 2011, Dr. Crenshaw taught his freshman seminar critical thinking course at 8:00 a.m. R. 222, l. 17-R. 223, l. 10. During that class, he noticed a female student nodding off, which he testified was unusual for that student. R. 223, ll. 13-20. Some other students told Dr. Crenshaw that she had fallen and suffered a head injury at lacrosse practice that morning. R. 223, l. 25-R. 224, l. 8. She fell and hit her head twice – once on the ground and once on her lacrosse stick. R. 224, ll. 10-12. Dr. Crenshaw was previously a certified paramedic, who was an EMT for 18 years. R. 229, l. 25-R. 230, l. 1. Based on his experience, he administered standard orientation tests to her to see whether she was aware of time, place, person, and events, and while she could respond to his questions her speech was abnormally slow. R. 224, ll. 13-18. Based off his observations and the account of the injury, Dr. Crenshaw called Dean Robin Agnew and requested that she call an ambulance while he stayed with the student. R. 224, l. 18-R. 225, l. 8. The Erskine Employee Resource Handbook calls for employees to call 911 when a student suffers a serious injury or illness, to stay at the scene until emergency personnel arrives, and to notify the vice-president for student services. R. 233, l. 2-R. 234, l. 14; Employee Resource Handbook R. 821. The EMT arrived in the classroom, and took over treatment and transportation of the student to the hospital because of a closed head injury. R. 225, ll.8-19. When she exited the room on a stretcher, the student was calm. R. 226, l. 13.

After a little while, Dr. Crenshaw noticed the ambulance had not left yet so he went to tell her goodbye and good luck. R. 227, ll. 7-13. When he arrived some of Erskine College's athletic trainers were on the scene telling the student she did not have

to go to the hospital despite showing symptoms of a closed head injury. R. 227, l. 22-R. 228, l. 2. The paramedic in charge then left the ambulance and asked Dr. Crenshaw to stay with the student in the back of the ambulance because she was now upset. R. 228, l. 22-R. 229, l. 2. Then Dean Brad Christie got into the back of the ambulance and told her she could refuse treatment despite him having no relationship with the student or medical training. R. 231, ll. 6-21.

Dr. Crenshaw studied English and earned his undergraduate degree from Wofford College and then his master's degree from the University of South Carolina in 1972. R. 209, ll. 12-24. At that point he went into the Army where he was stationed at Fort Sill, Oklahoma, in field artillery. R. 209, l. 24-R. 210, l. 3. He then graduated with his Ph.D. in English from the University of South Carolina and was hired as an English professor at Erskine beginning in the fall of 1976. R. 210, ll. 9-24. Dr. Crenshaw started as an assistant professor and worked his way through Erskine College's tenure process, and achieved tenure as a full professor in 1984. R. 211, l. 1-R. 212, l. 14. A tenured professor is granted due process and a set procedure for termination in the Erskine faculty manual. Plaintiff's Exhibit No. 6, R. 815-20. In 1987, Erskine named Dr. Crenshaw the Dorn-Reeder Professor of English, which was an honor for him and provided financial relief for Erskine because this chair meant that his salary would be partially funded by an outside source. R. 212, l. 17-R. 214, l. 2.

While teaching at Erskine, Dr. Crenshaw was a member of two professional organizations for writers. R. 214, l. 11-R. 215, l. 5. He won various awards for his published works. R. 215, l. 23-R. 216, l. 4. The students and faculty at Erskine named Dr. Crenshaw teacher of the year twice, most recently in 2010. R. 216, ll. 5-19. Dr.

Crenshaw was active in the Abbeville County community as he was a volunteer EMT for 18 years, served on the Abbeville hospital board for more than a decade, and served on the Abbeville school board for more than a dozen years. R. 216, l. 20-R. 217, l. 24.

Following the ambulance incident on September 24, 2010, Dr. Crenshaw and Adam Weyer, the head athletic trainer, engaged in an e-mail exchange. R. 235, ll. 6-16; Plaintiff's Exhibit No. 8, R. 822-29. Dr. Crenshaw copied Dean Agnew, Dean Christie, and college president David Norman on these emails because he felt like the policy had failed the injured student as her transportation to the hospital was delayed by the athletic trainers so he wanted to start a discussion about the policy. R. 235, l. 15-R. 236, l. 15. The efforts to start a discussion, however, did not receive any response from the administration. R. 236, ll. 15-17. Mr. Weyer accused Dr. Crenshaw of violating the athletic department's protocol by not calling an athletic trainer immediately when he noticed the student's injury but never produced a copy of that protocol despite multiple requests by Dr. Crenshaw to see it. R. 239, l.1-R. 240, l. 3; Plaintiff's Exhibit No. 8, R. 822-29.

Mr. Weyer then filed a grievance against Dr. Crenshaw with Tracy Spires, the non-discrimination coordinator, on September 27, 2010. R. 242, ll.13-25; Plaintiff's Exhibit No. 10, R. 836-38. The grievance was co-signed by Erskine athletics director Mark Peeler. R. 244, ll. 12-16. Mr. Peeler co-signed the grievance despite having no interaction with Dr. Crenshaw throughout the process. R. 511, ll. 9-11. The grievance accused Dr. Crenshaw of violating an athletic trainer's protocol he had never seen and of pushing a woman claiming to be the student's guardian at the ambulance. R. 245, ll. 2-11; R. 246, ll. 15-21; Plaintiff's Exhibit No. 10, R.836-38. Mr. Weyer testified, though,

that he was not aware of any protocol that Dr. Crenshaw violated. R. 491, ll. 15-17. Mr. Weyer made this accusation that Dr. Crenshaw pushed a woman even though he did not actually see it. R. 246, ll. 19-21. Dr. Crenshaw denied pushing the woman. R. 248, ll. 18-23. Dr. Crenshaw's version of events was corroborated by Due West police chief James Smith who was present at the ambulance and testified that the woman claiming to be the student's guardian was "irate, loud, very vociferous" and interfering with the EMT's. R. 155, ll. 5-18. Chief Smith testified that Crenshaw, on the other hand, behaved normally at the scene. R. 155, l. 21-R. 156, l. 5.

Dr. Gid Alston, the chairman of the Health and Human Performance department, which oversaw the athletic trainers, also filed a grievance against Dr. Crenshaw. R. 256, ll. 8-16. Dr. Alston's grievance accused Dr. Crenshaw of slandering athletic trainers in a public blog and in his classroom. R. 256, l. 17-R. 257, l. 4.; Plaintiff's Exhibit No. 11, R. 839-40. Dr. Crenshaw never commented on a public blog or made a comment about anyone specifically or personally. R. 257, ll. 5-9. Dr. Alston's grievance also accused Dr. Crenshaw of inferring that Erskine's athletic trainers were inept, poorly educated, and inadequately trained. R. 258, ll. 12-15; Plaintiff's Exhibit No. 11, R. 839-40. Dr. Crenshaw never made comments to that effect. R. 259, ll. 9-13. Dr. Alston also accused Dr. Crenshaw of potentially harming the image of the athletic training department. R. 259, l. 14-R. 260, l. 7. No one ever presented any evidence to Dr. Crenshaw of harm he had caused to the image of the athletic training department. R. 260, ll. 8-11. Of the three people to file grievances against Dr. Crenshaw, only Mr. Weyer appeared at the scene of the ambulance, and he did not appear until late in the process. R. 261, l. 24-R. 262, l. 16.

Ms. Spires then sent the grievances to Dean Christie because her charge did not include the type of dispute at issue here as she dealt with issues such as sexual harassment. R. 243, l. 11-R. 244, l. 2.; R. 261, l. 22-R. 262, l. 1. Dr. Christie then forwarded the matter to the Erskine faculty grievance committee to mediate the dispute. R. 161, ll. 5-8; R. 262, l. 4-22. The committee met and discussed the grievances on October 14, 2010. R. 161, ll. 9-14. At that meeting, committee members complained that there was no institutional structure to guide the committee or any similar case to refer to. R. 163, l. 23-R. 164, l. 5. One faculty member recused herself prior to the committee meeting because she didn't believe the case should have been sent to the grievance committee to mediate. R. 164, ll. 9-14. She noted that accusations of slander were beyond the grievance committee's charge. R. 540, ll. 16-20. Dr. John Showalter, a psychology professor who taught at Erskine for 39 years, was the vice-chairman of the grievance committee and recalled the meeting as "very civil and proper" despite his concerns with the lack of institutional procedure. R. 190, l. 16-R. 191, l. 5.; R. 192, ll. 1-16; R. 517, ll. 1-4. At the meeting, the grievance committee determined it could not formulate a workable mediation plan so it returned the grievances to Dean Christie. R. 113-18; Plaintiff's Exhibit No. 3, R. 807-08.

Dean Christie offered to mediate between the parties. R. 267, l. 13-R. 268, l. 2. He described the offer as "a conversation among peers, no electronic recordings, no lawyers, no other mediators but me." R. 268, ll. 5-7; Plaintiff's Exhibit No. 12, R. 841. Dr. Crenshaw accepted Dean Christie's offer, but the mediation did not occur because the complainants refused the offer. R. 268, ll. 8-15; R. 495, ll. 18-23; R. 512, ll. 17-23; R.

664, l. 22-R. 665, l. 2. Dean Christie then forwarded the matter to President Norman for adjudication. R. 269, ll. 9-23; Plaintiff's Exhibit No. 13, R. 842.

The first thing President Norman did was appoint an ad hoc faculty committee and created five questions for them to answer. R. 270, ll. 9-15; Plaintiff's Exhibit No. 14, R. 843-44. This six-person committee consisted of five tenured faculty members and one non-tenured faculty member. R. 272, ll. 6-10. President Norman asked the committee five multiple-choice questions to assess Dr. Crenshaw's behavior with the answer choices being "a) commendable behavior, b) compliant behavior, c) mishandled the situation, d) grossly mishandled the situation, e) handled the situation in a way that severely limits Erskine's ability to carry out its mission." R. 272, l. 23-R. 273, l. 2; Plaintiff's Exhibit No. 14, R. 843-44. The questions dealt with Dr. Crenshaw's 1) handling of an emergency situation; 2) treatment of emergency personnel including the student's emergency contact; 3) professionalism and collegiality towards other faculty at the point of crisis; 4) professionalism and collegiality in the aftermath of crisis; and 5) respect for the grievance committee and evidence of respect for faculty governance and the policies and procedures of Erskine. R. 273, ll. 2-11; Plaintiff's Exhibit No. 14, R.843-44. These questions posed to the ad hoc committee did not contain the original grievances against Dr. Crenshaw. R. 273, ll. 19-21; R. 667, ll. 9-13. This committee did not have any procedures in place. R. 667, ll. 14-23.

In December 2010, the ad hoc committee held a meeting and requested Dr. Crenshaw's presence at the meeting. R. 278, ll. 2-11. Dr. Crenshaw gave an opening statement that stressed the need for an actual adjudicatory process that protected the rights of all parties. R. 278, l. 12-R. 279, l. 16. Dr. Crenshaw categorically denied all

allegations against him and agreed to answer specific questions. R. 279, ll. 8-15. When questioned by the ad hoc committee about what procedures should be in place, Dr. Crenshaw referred the committee to a section of Erskine's employee manual that laid out a process for sexual harassment cases that allowed each side to put up evidence and be represented by a lawyer at the hearing. R. 281, ll. 4-22. The ad hoc committee did not use this procedure. R. 282, ll. 4-7. A committee member stated that their job was not to make any judgments but to gather information so the committee chairman stated the committee was postponing action until it could clarify issues regarding its charge. R. 282, ll. 9-23. In January, one member of the ad hoc committee told Dr. Crenshaw the committee had disbanded, but the chairman stated the committee was just on hold. R. 285, ll. 2-18. The ad hoc committee sent President Norman a letter dated January 4, 2011, that stated, "At this time, we believe we can do no more to help resolve the situation. It is our opinion that faculty governance will not be successful in this case; therefore, we are turning the matter back to the President's office for further action." R. 284, l. 22-R. 285, l. 3.; Plaintiff's Exhibit No. 16, R. 846-47.

Dr. Crenshaw taught during the spring semester and did not hear anything else about the matter until August 6, 2011, when President Norman requested a meeting after Dr. Crenshaw met with his freshman students for the first time. R. 287, ll. 3-17. At that meeting President Norman "said he was going to fire [Crenshaw]." R. 287, l. 14. Prior to the meeting, President Norman gave no indication to Dr. Crenshaw that termination was a possibility. R. 294, ll. 21-23. President Norman began the meeting by reading a letter that stated he was beginning termination proceedings against Crenshaw. R. 288, l. 23-R. 289, l. 2.

The Erskine faculty manual lays out requirements and a procedure to terminate a tenured professor. R. 289, ll. 7-8. To fire a tenured faculty member, the Erskine faculty manual requires adequate cause, which it defines as "personal conduct which substantially impairs the individual's fulfillment of institutional responsibilities, personal conduct which violates the moral standards which have always been a part of the Erskine College community, or which demonstrated incompetence or dishonesty...." Erskine faculty manual p. 35. The faculty manual specifies that tenure gives a "guarantee of reasonable employment security ... to ensure academic freedom to the faculty." R. 434, ll. 13-15; Erskine faculty manual R. 816. The manual also requires Erskine to follow a set procedure" in addition to demonstrating adequate cause," which begins with preliminary proceedings. Erskine faculty manual R. 818. Preliminary proceedings call for the president to consult with the appropriate academic vice president to "seek to resolve the matter with the tenured faculty member in private. If the matter is not resolved by mutual consent, the President will formulate a statement describing the grounds for dismissal." Erskine faculty manual R. 818-19. If the preliminary proceedings do not resolve the situation, then the process moves to formal proceedings where the president must inform the tenured professor in writing of the grounds for his dismissal and schedule a hearing before a faculty committee. Erskine faculty manual, R. 819, sec. 2. The faculty member is required to reply in writing "stating whether a hearing is desired ... not less than two weeks before the date set for the hearing." Erskine faculty manual p. 36, sec. 2. The faculty manual further lays out guidelines for selecting the hearing committee and appeals. Erskine faculty manual R. 819, secs. 3-4. The manual

allows for suspension "during these procedures only if immediate harm to himself or others is threatened by his continuance." Erskine faculty manual R. 819, sec. 5.

President Norman did not negotiate any matters with Dr. Crenshaw at the outset of the meeting but instead gave him three requirements to fulfill to keep his job. R. 289, ll. 16-20. President Norman also informed Dr. Crenshaw he would not be allowed to teach during the fall semester without giving any reason for the suspension. R. 289, ll. 20-25. The three requirements for keeping his job that President Norman laid out were that he must apologize to the people who filed grievances against him, the Erskine faculty, and the Erskine community. R. 290, ll. 8-20. The apology to the original complainants had to be accepted in writing by them, and the faculty apology had to be accepted by two-thirds of the faculty during a vote. R. 290, ll. 8-20. President Norman never specified what Dr. Crenshaw was required to apologize for. R. 290, l. 24-R. 291, l. 14. Late in the meeting, President Norman made an offer to Dr. Crenshaw to pay him salary during an early retirement. R. 295, ll. 3-23. President Norman initially gave Dr. Crenshaw until Monday at 5:00 p.m. to accept the offer but then left it open for twenty-one days. R. 295, l. 24-R. 296, l. 17.

Then six days later, President Norman escalated the termination process to the second stage by writing a letter to Dr. Crenshaw that notified him of his termination and the grounds thereof. R. 296, l. 25-R. 297, l. 18; Plaintiff's Exhibit No. 17, R. 848-856. The letter expressed three categories of allegations that were President' Norman's grounds for dismissal: 1) the September 24 ambulance incident and its aftermath; 2) Dr. Crenshaw's behavior before the ad hoc committee; and 3) disloyalty and disparagement of Erskine and its mission. R. 297, l. 21-23; R. 299, ll. 1-4; R. 300, l. 25-R. 301, l. 4;

Plaintiff's Exhibit No. 17, R. 848-56. The category one allegations that President Norman determined to be true were that Dr. Crenshaw wrongfully entered an ambulance, pushed the student's emergency contact, and improperly gave medical advice to the student despite others with more authority being present on the scene. R. 297, l. 21-R. 298, l. 24; Plaintiff's Exhibit No. 17, R. 848-56. The category two allegations that President Norman found true were that Dr. Crenshaw acted improperly before the ad hoc committee by threatening its members, leading to the resignation of one member. R. 299, ll. 1-15, 21-25; Plaintiff's Exhibit No. 17, R. 848-56. That member, Dr. Robert Elsner, did not actually resign as he signed the final resolution drafted by the committee. R. 299, ll. 16-19; R. 576, ll. 10-16. The ad hoc committee's written statement did not mention the word threat or bully. R. 576, l. 23-R. 577, l. 6. The final category of allegations President Norman based the termination on was based on a post from a closed Facebook group made up of Erskine alumni concerned with Erskine's future where Dr. Crenshaw criticized the direction Erskine was heading under President Norman's leadership. R. 300, l. 25-R. 302, l. 15; Plaintiff's Exhibit No. 17, R. 848-56. President Norman accused Dr. Crenshaw of blatant disloyalty to Erskine despite Dr. Crenshaw having donated \$3,000.00 to Erskine that year by not claiming expense reimbursements he was entitled to. R. 303, ll. 12-24. Dr. Crenshaw made this donation because he "knew that Erskine was in trouble and needed money." R. 304, ll. 6-7.

Dr. Crenshaw received this letter via e-mail on Friday, August 12, 2011. R. 304, ll. 13-24; R. 306, ll. 3-5. Dr. Crenshaw testified this letter was "like dropping a second bomb" because the parties were still in the preliminary proceedings with him deciding whether to accept Erskine's offer of early retirement, and then this letter escalated the

process to the second stage. R. 305, ll. 3-16. The letter set a termination hearing for August 29 at 9:00 a.m. and required Dr. Crenshaw to request the hearing in writing two weeks before the hearing, which made his response due by the following Monday at 9:00 a.m. R. 305, l. 17-R. 306, l. 2; Plaintiff's Exhibit No. 17, 848-56. The letter also stated that Dr. Crenshaw had a right to the hearing unless he waived the hearing. R. 306, ll. 9-11. Dr. Crenshaw did not affirmatively request this already-set hearing, but he did nothing to waive the hearing either. R. 306, l. 9-11. During this time, President Norman had banned him from campus even though his house of thirty-two years was basically in the heart of campus. R. 307, ll. 11-18.

On September 7, President Norman sent Dr. Crenshaw a letter formalizing his firing. R. 307, l. 21-R. 308, l. 3; Plaintiff's Exhibit No. 18, R. 857. President Norman gave Dr. Crenshaw until the next Friday to retrieve his personal items that he had accumulated during his more than thirty years on campus. Dr. Norman further required Dr. Crenshaw to retrieve these items during non-business hours with someone accompanying him. R. 308, ll. 4-22.

The original grievances filed against Dr. Crenshaw that started the whole process were never resolved. R. 313, ll. 4-7; R. 498, ll. 15-17; R. 513, ll. 6-8. Dr. Crenshaw "expected to be teaching for several more years" if not for the termination. R. 313, l. 18. His salary at the time of his termination was \$70,000.00 per year, and he was accruing retirement benefits, which he had to deplete after being fired. R. 317, ll. 1-19. His salary had been stuck at that level for several years because Erskine was in a salary freeze, but he expected a raise possibly as soon as the year he was fired. R. 317, l. 20-R. 318, l. 5.

After being terminated, Dr. Crenshaw took out \$50,000.00 from his retirement and went on Social Security, which lowered his benefits. R. 318, l. 11-R. 319, l. 6.

## ARGUMENT

The trial court judge erred by granting Erskine College a judgment notwithstanding the verdict, finding that Dr. William Crenshaw breached his contractual obligation to Erskine College, even though the jurors, by special verdict form, expressly found (1) Dr. Crenshaw did not breach his obligation under the agreement and (2) Erskine College did breach its obligation under the agreement.

After reviewing the standard of review for motions for a judgment notwithstanding the verdict (“JNOV”), Dr. Crenshaw will explain why the trial court judge erred by granting Erskine College a JNOV.

### *Standard of Review*

When reviewing the circuit court’s ruling on a directed verdict or JNOV motion, this court must apply the same standard as the circuit court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party. The circuit 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. Moreover, [a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. In deciding such motions, neither the [circuit] court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.

*Jones v. Builders Inv. Grp., LLC*, 415 S.C. 321, 328, 781 S.E.2d 737, 741 (Ct. App. 2015) (internal quotations and citations omitted). “The verdict will be upheld if there is any evidence to sustain the factual findings implicit in the jury’s verdict.” *Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 651 (Ct. App. 1994) (citing *Hilton Head Island Realty, Inc. v. Skull Creek Club*, 287 S.C. 530, 339 S.E.2d 890 (Ct. App. 1986)).

“A cause of action for breach of contract seeking money damages is an action at law.” *Eldeco, Inc. v. Charleston Cty. Sch. Dist.*, 372 S.C. 470, 476, 642 S.E.2d 726, 729 (2007). “It is improper in a law case to submit factual issues to a jury in the form of non-binding ‘advisory interrogatories.’ A jury’s resolution of factual issues in a law case is

binding on trial and appellate courts.” *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 480, 629 S.E.2d 653, 672 (2006) (citing *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976)).

### ***Discussion***

The Evidence presented at trial established the following timeline, which also revealed that Erskine College never intended to comply with its obligations to Dr. Crenshaw under the agreement:

**On August 6, 2011**, the Erskine College, through Dr. Norman, suspended Dr. Crenshaw and initiated Preliminary Proceedings for termination. Two options emerged. The first required Dr. Crenshaw to apologize to the specific faculty members involved in the grievances, the entire Erskine faculty, and the larger Erskine Community. This option was available until **December 2011**. The second option was early retirement. Federal law required early retirement to remain open for twenty-one days.

**On August 11, 2011**, Dr. Norman confirmed in writing that that Dr. Crenshaw had twenty-one days, i.e. until **August 27, 2011**, to consider the early retirement option.

**On August 12, 2012**, Dr. Norman informed Dr. Crenshaw that Erskine College had escalated to Formal Proceedings, outlined the grounds for termination, and set the Hearing Committee for **August 29, 2011**.

Dr. Norman’s letter of August 12, 2011, expressly represented to Dr. Crenshaw that the hearing would occur “unless you waive your right to a hearing.”

At the end of all the evidence, the trial court judge denied Erskine College’s motion for a directed verdict reasoning, “I think there is sufficient factual questions submitted to the jury, the issues of each party performed their obligations under the terms of the faculty manual.” The trial judge suggested submitting a verdict form asking,

"[D]id the Defendant Erskine College, breach any obligation owed under the faculty manual?" R. 751, l. 22 – R. 752, l. 6.

After the trial judge instructed the jurors on the law, Erskine College requested the verdict form "include an additional question as to whether or not Plaintiff, well, William Crenshaw fulfilled his obligations." R. 790, ll. 19-24. *See S. Carolina Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 300, 641 S.E.2d 903, 906 (2007) ("The trial judge has the discretion to determine how a case is submitted to the jury" including utilizing a special verdict form."). After some discussion, the trial court judge submitted the following two questions to the jury:

1. Did Dr. William Crenshaw breach his obligation under the agreement?
2. Did Erskine College breach its obligation under the agreement?

R. 789, l. 19 – 790, l. 25; R. 4. The jury answered "no" to the first question and "yes" to the second question and found the amount of damages "sustained for this breach" by Erskine College to be \$600,000.00.<sup>1</sup>

The trial court judge was required to view the evidence in a light most favorable to Dr. Crenshaw and deny Erskine College's motion for a JNOV if any reasonable inferences drawn from the evidence supported the jury's verdict. The record in this case supports the jury's finding that Dr. Crenshaw complied with his obligations under the agreement, and Erskine College breached its obligations.

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<sup>1</sup> Although the trial court judge found that the Faculty Manual was at least part of the agreement between Erskine College and Dr. Crenshaw, the court's jury instructions, without objection, allowed the jurors some discretion in determining the exact terms of the agreement. R. 782, l. 13 - R. 783, l. 8. By not objecting to the special verdict form, Erskine College waived any right to complain. Rule 49, SCRPC. The trial court and appellate court are bound by the jury's determination. *Erickson and Townes Assocs., Ltd., supra.*

As a threshold matter, Dr. Crenshaw was prepared to meet his obligations under the agreement by teaching classes during the fall semester. He returned to campus on August 6, 2011 to meet his freshmen classes. The record, however, demonstrates that Erskine College did not intend to honor its obligations to Dr. Crenshaw. After Dr. Crenshaw met with one of his classes, Dr. Norman informed Dr. Crenshaw that he was suspended from his position and banned from campus. According to the Faculty Manual, at p. 35, "In addition to demonstrating adequate cause for terminating a tenured faculty appointment, the College will insure that both individual rights and its own institutional integrity are preserved through procedures that guarantee due process." In addition to the implied covenant of good faith contained in every contract, Erskine College expressly warranted it would be fair to tenured faculty members, both of which the College breached in multiple ways.

"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) (citing *Tharpe v. G.E. Moore Co.*, 254 S.C. 196, 174 S.E.2d 397 (1970)). See also *Parker v. Byrd*, 309 S.C. 189, 194, 420 S.E.2d 850, 853 (1992). During the period from August 6 to 12, 2011, Erskine College's bad faith and unfair dealings with Dr. Crenshaw manifested itself in eight significant ways.

First, suspending Dr. Crenshaw was contrary to the Faculty Manual. According to the manual, at R. 819, "The tenured faculty member will be suspended from his position during these [termination procedures] only if immediate harm to himself or others is threatened by his continuance" (emphasis added). The record is devoid of any evidence that Dr. Crenshaw was an immediate threat to himself or others as those words

are ordinarily understood. Suspending Dr. Crenshaw in this manner is evidence not only of Erskine College's breach of the agreement but also its bad faith.

Second, during the August 6<sup>th</sup> meeting, Dr. Norman did not identify any grounds for terminating Dr. Crenshaw. Dr. Norman finally set forth the supposed grounds for termination in his August 12<sup>th</sup> letter to Dr. Crenshaw. The evidence supports the jurors finding that *none* of the grounds set forth in the letter constituted just cause under the agreement. Terminating Dr. Crenshaw without just cause is evidence not only of Erskine College's breach of the agreement but also its bad faith.

Third, Erskine College did not comply with the Preliminary Proceedings provision of the Faculty Manual, at R. 818-19. Dr. Norman initially set unprecedented and impossible conditions for Dr. Crenshaw to keep his job. No Erskine College faculty member ever had been required to get two-thirds of the faculty to accept an apology. A faculty vote, in fact, never had required a two-thirds vote. Dr. Norman further required Dr. Crenshaw to apologize to the "Erskine Community," even though Dr. Norman himself could not provide a definition of the "Erskine Community." Erskine College setting these unprecedented and impossible conditions is evidence not only of Erskine College's breach of the agreement but also its bad faith.

Fourth, when the discussions turned to early retirement, Erskine College terminated the Preliminary Proceedings prior to the expiration of the twenty-one-day consideration period required by federal law for consideration of an offer of early retirement. Erskine College prematurely terminating the Preliminary Proceedings and violating federal law is evidence not only of Erskine College's breach of the agreement but also its bad faith. Based on Erskine College's handling of the Preliminary

Proceedings, a reasonable jury could conclude that Erskine College was severing all ties with Dr. Crenshaw, without just cause, regardless of what it took to accomplish that objective.

Fifth, a reasonable jury could conclude that Erskine College did not comply with the Formal Proceedings, at R. 819, of the Faculty Manual. Although the Faculty Manual requires the President to fix the time and place of the Formal Proceedings, Dr. Norman further represented to Dr. Crenshaw that the hearing would take place unless he waived his right to a hearing. A reasonable jury could conclude that Dr. Crenshaw was entitled to rely on that provision. Dr. Norman, however, did not take any steps to appoint the Faculty Hearing Committee. Not appointing the Faculty Hearing Committee is evidence not only of Erskine College's breach of the agreement but also its bad faith.

Sixth, a reasonable jury could conclude that Erskine College scheduled the Faculty Committee Hearing in such a manner that Dr. Crenshaw did not have a meaningful opportunity for a fair hearing. Dr. Norman gave Dr. Crenshaw only a weekend to respond to the August 12<sup>th</sup> letter, meaning that Dr. Crenshaw did not have an opportunity to speak to his attorney, even though the Faculty Manual contemplates the tenured faculty member having access to counsel. Scheduling the Faculty Committee Hearing in this manner is evidence not only of Erskine College's breach of the agreement but also its bad faith.

Seventh, the Formal Proceedings and Faculty Hearing Committee procedure set forth an objective standard of "allow[ing] the tenured faculty member to prepare a defense." Faculty Manual, R. 819. In his August 12<sup>th</sup> letter, Dr. Norman, informed Dr. Crenshaw, "This schedule is subject to adjustment upon reasonable request." R. 849. A

reasonable jury could conclude that Dr. Norman changed the objective standard of allowing Dr. Crenshaw sufficient time to prepare a defense to Dr. Norman's subject determination of what is reasonable. A reasonable jury additionally could conclude that Dr. Norman's conduct from August 6<sup>th</sup> to August 12<sup>th</sup> demonstrated that Erskine College had no intention of providing Dr. Crenshaw with a fair Faculty Hearing Committee procedure. Scheduling the Faculty Committee Hearing in this manner is evidence not only of Erskine College's breach of the agreement but also its bad faith.

Eighth, a reasonable jury could view Dr. Norman's handling of the entire matter and determine that Erskine College breached its agreement with Dr. Crenshaw, including its obligation to deal with him in good faith.

This Court, therefore, should reinstate the jury's verdict.

## CONCLUSION

The trial court judge erred by granting Erskine College a judgment notwithstanding the verdict, finding that Dr. William Crenshaw breached his contractual obligation to Erskine College, even though the jurors, by special verdict form, expressly found (1) Dr. Crenshaw did not breach his obligation under the agreement and (2) Erskine College did breach its obligation under the agreement. This Court should reverse the trial court judge's order granting Erskine College a JNOV and reinstate the jury's verdict.

Respectfully Submitted,

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This 20<sup>th</sup> day of September 2016.

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

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Court of Appeals Case No. 2015-002090

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William Crenshaw, ..... Appellant

v.

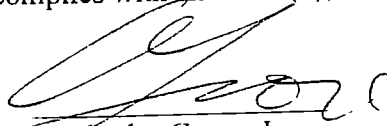
Erskine College and David Norman, ..... Respondents.

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Rule 211, SCACR Certification

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I certify that this Final Brief of Appellant complies with Rule 211(b), SCACR.



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THE STATE OF SOUTH CAROLINA  
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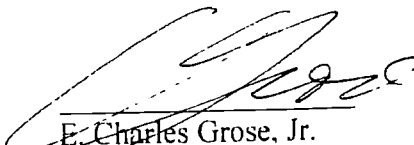
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PROOF OF SERVICE

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I certify that I have served the Final Brief of Appellant and Final Reply Brief of Appellant, by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed as follows:

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THE STATE OF SOUTH CAROLINA  
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APPEAL FROM ABBEVILLE COUNTY  
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Eugene C. Griffith, Jr., Circuit Court Judge

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**RECEIVED**

SEP 29 2016

SC Court of Appeals

William Crenshaw,

Appellant,

v.

Erskine College and David A. Norman,

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FINAL BRIEF OF RESPONDENTS

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## TABLE OF CONTENTS

Table of Authorities .....	iii
Statement of Issues on Appeal .....	v
Statement of the Case .....	1
Statement of the Facts .....	2
Arguments .....	10
I.    CRENSHAW'S ARGUMENTS ON APPEAL WERE NOT PROPERLY PRESERVED FOR APPEAL AND SHOULD NOT BE ADDRESSED BY THE APPELLATE COURT .....	11
II.   THE TRIAL COURT PROPERLY GRANTED ERSKINE'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT ON CRENSHAW'S BREACH OF CONTRACT CLAIM AGAINST ERSKINE DUE TO CRENSHAW'S FAILURE TO FULFILL HIS SOLE OBLIGATION UNDER THE ALLEGED CONTRACT—TO REQUEST A HEARING IN WHICH HIS FACULTY PEERS COULD EVALUATE ERSKINE'S STATEMENT DESCRIBING THE GROUNDS FOR HIS DISMISSAL .....	13
Conclusion .....	18

**TABLE OF AUTHORITIES**

**CASES**

*Alala v. Peachtree Plantations, Inc.*, 292 S.C. 160, 355 S.E.2d 286 (Ct. App. 1987) .....14

*Creech v. S.C. Wildlife & Marine Res. Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997) .....10

*Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004) .....10, 11, 12

*Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653 (2006)..... 17

*Jones v. Builders Inv. Group, LLC*, 415 S.C. 321, 781 S.E.2d 737 (Ct. App. 2015)..... 10

*Milliken & Co. v. Morin*, 399 S.C. 23, 731 S.E.2d 288 (2012) ..... 13

*Parks v. Lyons*, 219 S.C. 40, 64 S.E.2d 123 (1951) .....13, 18

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(Ct. App. 2004) .....16

*S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 548 S.E.2d 880  
(Ct. App. 2001) .....10, 11

*Smith v. Ridgeway Chemicals, Inc.*, 302 S.C. 303, 305, 395 S.E.2d 742 (Ct. App. 1990) 17

*Steinke v. S.C. Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 386,  
520 S.E.2d 142, 148 (1999) .....10

*Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429-30,  
445 S.E.2d 439 (1994) .....10

*Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469,  
514 S.E.2d 126, 135 (1999) .....16

*Watson v. Suggs*, 313 S.C. 291, 294, 437 S.E.2d 172 (Ct. App. 1993) .....11

*Williams v. Riedman*, 339 S.C. 251, 274, 529 S.E.2d 28 (Ct. App. 2000) ..... 16

*Wright v. Craft*, 372 S.C. 1, 32, 640 S.E.2d 486, 503 (Ct. App. 2006) .....10

**COURT RULES**

Rule 59(e)..... 2, 12

**OTHER AUTHORITIES**

27 Am. Jur. 753.....13

STATEMENT OF ISSUES ON APPEAL

- I. WHETHER CRENSHAW'S ARGUMENTS ON APPEAL WERE PROPERLY PRESERVED FOR APPEAL AND WHETHER THEY SHOULD BE ADDRESSED BY THE APPELLATE COURT?
  
- II. WHETHER THE TRIAL COURT PROPERLY GRANTED ERSKINE'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT ON CRENSHAW'S BREACH OF CONTRACT CLAIM DUE TO CRENSHAW'S FAILURE TO FULFILL HIS SOLE OBLIGATION UNDER THE ALLEGED CONTRACT—TO REQUEST A HEARING IN WHICH HIS FACULTY PEERS COULD EVALUATE ERSKINE'S STATEMENT DESCRIBING THE GROUNDS FOR HIS DISMISSAL?

## STATEMENT OF THE CASE

Crenshaw filed this action on June 6, 2012, as a result of his termination from employment with Erskine and the events leading up to the same. Crenshaw's Complaint alleges claims against Erskine and its former President David A. Norman for (1) wrongful discharge; (2) breach of contract; and (3) intentional infliction of emotional distress. (R. pp. 18-26.) Erskine filed its Answer to the Complaint on July 9, 2012, denying the claims. The parties engaged in extensive discovery in this matter, including multiple depositions and multiple sets of written discovery requests.

Erskine and Norman filed their Motion for Summary Judgment on all claims on March 28, 2014. The trial court held a hearing on Erskine and Norman's summary judgment motion at which both parties presented oral arguments in support of their respective positions. The trial court denied Erskine and Norman's Motion for Summary Judgment in its entirety. Prior to trial, Erskine and Norman filed a second motion for summary judgment only on Crenshaw's wrongful discharge cause of action under Supreme Court authority issued after ruling on its first motion for summary judgment. The trial court allowed arguments on the second summary judgment motion as part of pre-trial proceedings. During argument, Crenshaw conceded that his wrongful discharge claim was nothing more than an alternative statement of his breach of contract claim and merged the two claims.

The trial was held June 8, 2015 to June 11, 2015, at the Abbeville County Courthouse. At the close of Crenshaw's case, Erskine and Norman moved for directed verdict on all claims. (R. p. 338, lines 12-15.) The trial court granted the directed verdict motions on all claims as to Norman in his individual capacity, but denied the motions as

to Erskine. (R. p. 450, lines 3-16; R. p. 456, line 23; R. p. 457, line 15.) Crenshaw has not appealed the entry of judgment for Norman.

At the close of Erskine's case the court granted Erskine's directed verdict motion regarding the intentional infliction of emotional distress claim. (R. p. 751, line 15-p. 752, line 6.) Crenshaw has not appealed the entry of judgment for Erskine on this claim.

The breach of contract claim against Erskine was submitted to the jury. The jury returned a verdict in favor of Crenshaw in the amount of \$600,000. (R. p. 793, line 20-p. 794, line 12.) Thereafter, on June 17, 2015, Erskine filed a JNOV motion or in the alternative for a new trial, and filed a supporting memorandum of law on July 10, 2015. (R. p. 85.) The court held a hearing on Erskine's JNOV motion on July 9, 2015. (R. p. 797.) Crenshaw filed a response to Erskine's JNOV motion. (R. p. 93.) In an Order dated July 22, 2015, the Court granted Erskine a new trial. (R. p. 5.) Erskine filed a Rule 59(e), SCRCPP motion to alter or amend the judgment seeking clarification of whether the Court had denied the JNOV motion in order to properly preserve the issue for appeal. (R. p. 105.) Crenshaw also filed a Rule 59(e), SCRCPP motion to alter or amend seeking to have the jury's verdict reinstated. (R. p. 102.) On August 24, 2015, the Judge issued an Order granting Erskine's JNOV motion and denying Crenshaw's Rule 59(e), SCRCPP motion. (R. p. 6.) Crenshaw has appealed that Order.

## STATEMENT OF THE FACTS

### A. Context for Termination of Crenshaw's Employment

After a series of events that took place on September 24, 2010 involving a student in one of Crenshaw's classes having a head injury, three Erskine employees filed formal grievances against Crenshaw. (R. p. 1048.) The grievances were provided to Erskine's Grievance Committee for resolution, but the Grievance Committee was unsuccessful

resolving these issues. (R. pp. 1052-1055.) In an attempt to resolve the grievances, Norman appointed a special grievance committee to adjudicate the issues. (R. pp. 1052-1054.) The special grievance committee was unable to do so because of obstructionist actions and threats by Crenshaw. (R. pp. 1052-1054.) In the meantime, Crenshaw made blog posts which Norman determined reflected negatively on Erskine and its mission. (R. p. 1048, lines 8-9.) These three issues: (1) Crenshaw's conduct on September 24, 2010 and after, and the resulting grievances against him by three employees; (2) Crenshaw's treatment of the special grievance committee; and (3) Crenshaw's public postings on the internet, formed the basis of Norman's decision to begin the process for terminating a tenured faculty member. (R. pp. 1048-1056.)

**B. Procedures for Terminating a Tenured Faculty Member**

Erskine's Faculty Manual (the "Manual") sets forth detailed procedures for terminating the employment of a tenured faculty member. (R. p. 1152-1153.) The procedures are a multi-step process for the purpose of defending the rights of the tenured faculty member. (R. p. 619, lines 13-16.) The Manual first establishes specific grounds for dismissal including grounds constituting cause. (R. p. 1152.) The procedure for terminating a tenured faculty member's employment for cause begins with "Preliminary Proceedings." (R. p. 1152.) Preliminary Proceedings require the President to seek to resolve the matter with the faculty member in private and states that if the matter is not resolved "by mutual consent" then the President will formulate a statement describing the grounds for dismissal. (R. p. 1153.)

The second step in the procedure is titled "Formal Proceedings." (R. p. 1153.)

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.

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.) The purpose of this hearing is to give the tenured faculty member an opportunity to defend against the grounds for dismissal. (R. p. 1153.)

The Manual's section titled "Hearing Committee" sets forth the procedures for the hearing on termination. (R. p. 1153.) The procedures include: (1) election of the Hearing Committee by the faculty consisting of seven members from the faculty, and the Hearing Committee's self-election of a chairperson; (2) the ability of the Hearing Committee to retain counsel at Erskine's expense to assist with its duties; (3) that the Hearing Committee will determine the order of witnesses and admissibility of evidence; (4) that the burden of proving the grounds for dismissal will be on the President and that the President may argue the case and present witnesses and may have the assistance of counsel; (5) that the tenured faculty member likewise may be assisted by counsel at the hearing and may offer and question witnesses; (6) that the Hearing Committee will use its influence to assist the parties in securing the presence of their witnesses; (7) that a verbatim record of the hearing will be kept; and (8) that the Hearing Committee will make a decision on each of the causes for dismissal presented to it and then

simultaneously notify the President and the tenured faculty member of the decision. (R. p. 1153.)

The Manual then provides that either the President or the tenured faculty member may appeal the Hearing Committee's decision directly to Erskine's Board of Trustees and may be represented by counsel in that appeal. (R. p. 1153.) The Board of Trustees' review will include oral and/or written argument by the President and tenured faculty member or by their counsel. (R. p. 1153.) Finally, the procedures for termination of a tenured faculty member include that the faculty member will be suspended from teaching during the termination procedures only if "immediate harm" to himself or others is threatened by his continuance. (R. p. 1153.) The provision regarding "immediate harm" does not require that the harm be physical harm. (R. p. 1153.) Crenshaw acknowledged that these procedures were part of the Manual which constitutes the contract at issue. (R. p. 388, lines 6-19; R. p. 403, line 11-p. 406, line 13.)

**C. Procedures of Erskine's Termination of Crenshaw's Employment**

**1. Preliminary Proceedings**

By August 5, 2011, Norman had decided to initiate the for cause process in the Faculty Handbook. (R. p. 620, lines 9-19.) Norman wrote a letter to Crenshaw dated August 5, 2011 to introduce the Preliminary Proceedings. (R. p. 1192; R. p. 396, lines 6-25; R. p. 620, line 20-p. 621, line 1.) Norman then met with Crenshaw on Saturday, August 6, 2011, to begin the Preliminary Proceedings and to resolve the matter with the intent to keep Crenshaw employed without having to go into Formal Proceedings for termination of employment. (R. p. 986, line 24-p. 987, line 6; R. p. 621, lines 7-18; R. p. 630, lines 14-25.) Norman began the meeting by reading the letter dated August 5, 2011,

to Crenshaw, which stated Norman's hope that 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. (R. p. 1192; R. p. 397, line 22-p. 398, line 20.) Norman had ideas of possible conditions that would in his mind resolve the matter with mutual consent but was open to other suggestions from Crenshaw. (R. p. 622, line 15-p. 623, line 7; R. p. 624, lines 5-7.) In the meeting on August 6, 2011, Norman offered Crenshaw conditions, consisting of three sets of apologies, which if met would allow him to remain employed. (R. p. 382, line 17-p. 384, line 3; R. p. 396, lines 6-25.) During the meeting Crenshaw called Norman names, threatened a lawsuit, and acted aggressively toward Norman. (R. p. 381, line 3-p. 382, line 14; R. p. 384, lines 14-19; R. p. 386, line 4-p. 387, line 2; R. p. 624, line 13-p. 625, line 7.) Despite Crenshaw's conduct, Norman maintained his composure and treated Crenshaw with dignity and respect. (R. p. 387, line 20-p. 388, line 1.)

At the end of the meeting Crenshaw proposed "Why don't you buy me off? I'm sure I could sell out. All you've got to do is offer me a decent price." (R. p. 1024, lines 14-21.) Crenshaw and Norman then seriously discussed a new option, severance pay in exchange for early retirement. (R. p. 1024, line 14-p. 1025, line 15; R. p. 626, lines 14-21.) Crenshaw and Norman agreed that Crenshaw would discuss the early retirement option including the amount of severance with his wife and make a decision about it by 5:00 PM on Monday, August 8, 2011. (R. p. 385, line 12-p. 386, line 3; R. p. 1027, lines 2-4; R. p. 1030, lines 8-12.) Despite insertion of the unexpected early retirement option into the discussion, Norman and Crenshaw were still in the Preliminary Proceedings stage at the end of their discussion on August 6, 2011, and the matter still could have

been resolved by other forms of mutual consent that would have allowed Crenshaw to remain employed. (R. p. 627, line 17-p. 628, line 3.) The meeting ended with Crenshaw outlining his three options: (1) to agree to the apologies requested by Norman for resolution by mutual consent; (2) to go to step two, *i.e.*, "Formal Proceedings" for termination where Norman would outline the grounds for termination; or (3) to accept the early retirement offer. (R. p. 1029, lines 12-22.) Crenshaw stated "I'm good with that. We'll do one of those three." (R. p. 1029, lines 12-22.)

Just before the agreed-upon deadline for Crenshaw to decide on the early retirement option he informed Norman that he and his attorney were willing to discuss the issue of his early retirement. (R. p. 1222; R. p. 629, line 8-p. 630, line 8.) Norman was unsure whether this response was a yes or no but treated it as acceptance of the offer. (R. p. 630, lines 1-8.) He responded that he would draft an agreement for the early retirement and a draft announcement for Crenshaw's approval to prompt a commitment from Crenshaw if he was in fact serious about retiring. (R. p. 1222; R. p. 630, line 14-p. 631, line 11; R. p. 632, lines 3-21.)

The next day Norman sent Crenshaw a draft agreement for an early retirement payment and a draft announcement of Crenshaw's retirement. (R. pp. 1222-1224.) Crenshaw responded that announcing his retirement was premature because he was still considering the severance agreement which provided up to 21 days to consider. (R. pp. 1222-1224.) The 21-day provision was required in order to obtain a valid release of a claim for age discrimination under the Age Discrimination in Employment Act of 1967. (R. p. 635, lines 10-16.) Norman responded that Crenshaw could indeed take the entire 21-day period to consider the early retirement agreement. (R. p. 636, lines 3-9.)

However, since Norman had already informed Crenshaw in the August 6 meeting that 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. (R. pp. 1224-1225; R. p. 1021, line 22-p. 1023, line 8.) Crenshaw responded that he disagreed with his removal from the classroom for the semester. (R. p. 1225.) Crenshaw's response also confirmed that he had not yet made a decision on the options he himself confirmed in the August 6, 2011 meeting. (R. pp. 1225-1226.)

## **2. Formal Proceedings**

By the time of his e-mail to Dr. Norman on August 12, 2011, Crenshaw still had not selected any of the three options that he agreed to choose from by August 8, 2011. (R. pp. 1222-1226; R. p. 637, line 15-p. 638, line 10.) Norman, despite his efforts through communications with Crenshaw from August 8 to August 12, could not prompt Crenshaw to choose one of the three options: (1) resolve by mutual consent by making apologies; (2) move to formal proceedings by stating grounds for termination; or (3) accepting the early retirement option. (R. p. 1227; R. p. 637, line 15-p. 638, line 10.) Because of Crenshaw's failure to choose one of the agreed-upon options by the fourth day after the agreed-upon deadline, on August 12, 2011, Norman moved to formal proceedings and sent Crenshaw a thorough statement of the grounds for his dismissal. (R. p. 1227; R. pp. 1048-1056; R. p. 637, line 15-p. 638, line 10.)

Both Norman's cover e-mail to Crenshaw sending the grounds for dismissal, and the letter stating the grounds for dismissal, informed Crenshaw that he had to request a hearing in order to have the grounds for dismissal evaluated by his peers and gave him

the deadline by which he must request the hearing. (R. p. 1227; R. pp. 1048-1049; R. p. 400, line 17-p. 401, line 6.) 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 29<sup>th</sup> at 9 AM 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.”

(R. p. 1049.) This language meets the Faculty Manual’s requirements for formal proceedings, and in fact uses nearly identical language to the Faculty Manual regarding the requirement that a hearing will be scheduled, but that the employee must reply to the President in writing stating whether the hearing is desired and that the reply must be at least two weeks prior to the date set for hearing. (R. p. 1153.) Norman also informed Crenshaw that the hearing date could be adjusted upon Crenshaw’s reasonable request. (R. p. 1049; R. p. 401, lines 1-10; R. p. 638, lines 11-23.) However, Crenshaw never requested the hearing to determine whether Norman’s grounds for terminating his employment would pass muster. (R. p. 400, line 11-p. 403, line 1; R. p. 653, lines 8-12.) Crenshaw did not appear on the appointed date for the hearing. (R. p. 653, lines 15-24.) Norman did appear on the appointed date and waited for three hours in case Crenshaw arrived, which he never did. (R. p. 653, lines 15-24.)

While the Formal Proceedings were ongoing, the timeline for the offer of early retirement was also running. The original 21-day consideration period expired on August 30, 2011, without an acceptance or rejection of the offer by Crenshaw. (R. p. 1193; R. p. 653, line 25-p. 655, line 25.) 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. (R. p. 653, line 25-p. 655, line 25; R. p. 407, lines 4-17.) However, Crenshaw did not respond to the early retirement offer by September 5, 2011. (R. p. 408, lines 3-6; R. p. 653, line 25-p. 655, line 25.) After the extended deadline to accept the early retirement offer expired a second time, and since Crenshaw had not made a timely demand for the hearing, Norman terminated Crenshaw's employment on September 7, 2011. (R. p. 857; R. p. 408, lines 7-12; R. p. 654, lines 2-25.) There is no dispute that Crenshaw has never requested a hearing up through today.

## ARGUMENTS

### STANDARD OF REVIEW

The standard of review is well established and widely cited. "When reviewing the circuit court's ruling on a directed verdict or JNOV motion, this court must apply the same standard as the circuit court "by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Jones v. Builders Inv. Group, LLC*, 415 S.C. 321, 328, 781 S.E.2d 737, 741 (Ct. App. 2015) (citing *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 27-28, 602 S.E.2d 772, 782 (2004)). "The circuit court must deny a motion for . . . JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. *Id.* (citing *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994)). However, the appellate court will only reverse the trial court when no evidence supports its ruling. *Wright v. Craft*, 372 S.C. 1, 32, 640 S.E.2d 486, 503 (Ct. App. 2006) (citing *Steinke v. S.C. Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999); *Creech v. S.C. Wildlife & Marine Res. Dep't*, 328 S.C. 24, 29, 491 S.E.2d 571, 573 (1997)); *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 521, 548 S.E.2d 880, 885 (Ct. App. 2001) (internal

quotations omitted). "In a law case, a jury's verdict may be reversed on appeal when the only reasonable inference to be drawn from the evidence is contrary to the factual findings implicit in the jury's verdict." *Watson v. Suggs*, 313 S.C. 291, 294, 437 S.E.2d 172, 173 (Ct. App. 1993) (internal citation omitted).

I. **CRENSHAW'S ARGUMENTS ON APPEAL WERE NOT PROPERLY PRESERVED FOR APPEAL AND SHOULD NOT BE ADDRESSED BY THE APPELLATE COURT.**

As discerned by Erskine, Crenshaw presents two arguments on appeal, but argued neither of them in response to Erskine's JNOV motion. Therefore, neither argument was ruled upon by the trial court and cannot now be presented on appeal. *See Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 23, 602 S.E.2d 772, 779-780 (2004) ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court") (internal citations omitted).

Crenshaw states his first "Argument" on appeal to match his "Question Presented." (*See* Appellant's Final Br. p. 3, 18.) In both, he highlights the use of a special verdict form at trial to argue that the trial judge should not have granted JNOV after the jury's verdict using the special verdict form. *Id.* Crenshaw then cites the impropriety of submitting non-binding interrogatories to the jury in his "Standard of Review" and later argues that the jury's findings are binding on the trial court because of the use of the special verdict form. (*See* Appellant's Final Br. pp. 18-19, p. 20 n.1.)

Crenshaw's second argument, which is not stated in the "Argument" or "Question Presented" sections of his Initial Brief (*See* Appellant's Final Br. p. 3, 18), is that Erskine never intended to comply with its obligations under the Faculty Manual and thereby

breached the implied covenant of good faith and fair dealing that existed in the contract. (See Appellant's Final Br. pp. 19-24.)

Crenshaw did not make either of these arguments in opposition to Erskine's JNOV motion. He did not make them in: (1) Plaintiff's Response to Defendant Erskine College's Motion for JNOV and in the Alternative for a New Trial; (2) the hearing on Erskine's JNOV motion and in the alternative motion for new trial; or (3) Plaintiff's Motion to Alter or Amend the Order Granting Defendant Erskine College a New Trial. (R. pp. 93-98; R. pp. 797-804; R. pp. 102-104.) These briefings and events constitute all of Crenshaw's opportunities to argue the impact of the special verdict form and breach of the implied duty of good faith and fair dealing, but these arguments do not exist anywhere in the record. Moreover, the trial court's order granting Erskine JNOV also denies Crenshaw's motion to alter or amend the court's first order granting a new trial pursuant to Rule 59(e), SCRPC. (R. pp. 6-8.) In so doing, the trial court stated that "[b]y means of this order, the issues raised at trial and in each party's motion to alter or amend are comprehensively addressed." (R. p. 8.) Since Crenshaw did not raise issues regarding the special verdict form and breach of the implied duty of good faith and fair dealing, those issues were not considered or ruled upon by the trial court and cannot now be raised on appeal. See *Elam v. S.C. Dept. of Transp.*, 361 S.C. at 23; 602 S.E.2d at 779-780 (2004).

II. THE TRIAL COURT PROPERLY GRANTED ERSKINE'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT ON CRENSHAW'S BREACH OF CONTRACT CLAIM DUE TO CRENSHAW'S FAILURE TO FULFILL HIS SOLE OBLIGATION UNDER THE ALLEGED CONTRACT—TO REQUEST A HEARING IN WHICH HIS FACULTY PEERS COULD EVALUATE ERSKINE'S STATEMENT DESCRIBING THE GROUNDS FOR HIS DISMISSAL.

A. Crenshaw cannot recover under the contract because of his own breach of the contract.

"It is an elementary principle that one who seeks to recover damages for the 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 so to perform it." *Parks v. Lyons*, 219 S.C. 40, 48, 64 S.E.2d 123, 126 (1951). Even "[a]n infant who asserts contractual rights is bound by reciprocal obligations." *Id.* (citing 27 Am.Jur. 753). The trial court properly granted Erskine's JNOV motion because Crenshaw failed to perform his obligation under the Faculty Manual's procedure for terminating the employment of a tenured professor— the same procedure which Crenshaw claims Erskine violated and under which he claims entitlement to damages. (R. p. 388, lines 6-19.) As stated by the court, "As the undisputed evidence in this case is that Crenshaw failed to comply with the terms of the contract and request a hearing, he cannot recover on a breach of contract claim where he himself failed to fulfill the obligations of the contract and consequently breached the contract." (R. p. 7.)

The trial court granted Erskine's JNOV motion because there was no trial evidence that Crenshaw complied with his obligation under the alleged contract to request a hearing to review Erskine's grounds for terminating his employment. (R. pp. 6-8.) The trial court properly considered the issue because it was a matter of law for the

court to decide. *Milliken & Co. v. Morin*, 399 S.C. 23, 30, 731 S.E.2d 288, 291 (2012) (“An action for breach of contract is an action at law”) (internal citation omitted). “Whether a contract is . . . unenforceable is generally a question of law for the court.” *Id.* (internal citation omitted). And, “all parties must be obligated under a contract in order for it to be enforceable.” *Alala v. Peachtree Plantations, Inc.*, 292 S.C. 160, 167, 355 S.E.2d 286, 290 (Ct. App. 1987) (internal citations omitted). Therefore, the ultimate question of whether the Contract was enforceable, was a question of law for the judge to decide.

Crenshaw appeals the trial court’s order granting Erskine’s JNOV motion. See Appellant’s Final Brief p. 3. The evidence at trial, including Crenshaw’s own testimony, supports the trial court’s order granting JNOV, because it clearly establishes without the possibility of any inference otherwise that Crenshaw did not request a hearing to review the grounds for his termination. (R. p. 400, line 23-p. 401, line 3; R. p. 401, lines 11-12; R. p. 401, lines 14-22; R. p. 402, lines 15-16.) Since the appellate court will only reverse the trial court’s ruling on a JNOV motion when there is no evidence to support it, and since there is ample evidence from Crenshaw himself that he did not request a hearing—he admitted to not requesting a hearing no less than three times at trial—then the JNOV must be affirmed. (R. p. 400, line 23-p. 401, line 3; R. p. 401, lines 11-12; R. p. 401, lines 14-22; R. p. 402, lines 15-16.)

In Appellant’s Final Brief, Crenshaw argues that Erskine breached the Faculty Manual with regard to its duty to provide Crenshaw the hearing as part of his argument regarding breach of the implied duty of good faith and fair dealing. Because this argument is not properly before the Court (*see supra* Argument, Sec. I), and because the

implied covenant of good faith and fair dealing does not excuse Crenshaw's breach (*see infra* Argument, Sec. II.B.) it is unnecessary for Erskine to address its alleged breach based on the hearing. However, in order to correct the facts relied on by Crenshaw, Erskine will nonetheless do so briefly.

As the fifth example of alleged bad faith, Crenshaw argues that he should have been able to rely on the Faculty Manual's requirement that Norman fix the time and place of the hearing and that it would take place unless Crenshaw waived his right to it. (Appellant's Final Brief p. 23.) Norman did fix the time and place of the hearing for August 29 at 9 AM unless Crenshaw requested a reasonable adjustment to that date. (R. p. 1227; R. p. 1048.) But, Crenshaw did not request a reasonable adjustment or otherwise respond to the notice of the hearing. (R. p. 653, lines 8-12.) Norman appeared for the hearing and waited for Crenshaw for three hours, but Crenshaw never arrived. (R. p. 653, lines 15-24.) Furthermore, the Faculty Manual required Crenshaw to notify Norman in writing of his desire for a hearing. (R. p. 1153) ("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"). Norman notified Crenshaw of this requirement in both the statement of grounds for dismissal and its cover e-mail. (R. p. 1227; R. p. 1048.) Crenshaw's argument that Norman did not so notify him is meritless.

B. Crenshaw cannot avoid the dispositive effect of his own breach by arguing that Erskine breached the implied covenant of good faith and fair dealing.

If the Court deems Crenshaw's argument that Erskine breached the implied covenant of good faith and fair dealing to be properly before it then his argument that

such breach somehow precludes JNOV is of no merit. Crenshaw argues that Erskine breached the implied covenant of good faith and fair dealing in eight different ways. (Appellant's Final Br. pp. 21-24.) However, Crenshaw's argument fails because even if Erskine breached the duty of good faith and fair dealing (which it did not) that breach would not excuse Crenshaw from performing his obligation under the contract. See *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 487, 514 S.E.2d 126, 135 (1999) (affirming the Court of Appeals's holding that one who has himself breached the contract cannot prevail on a claim for breach of the implied duty of good faith and fair dealing)<sup>1</sup>; *Williams v. Riedman*, 339 S.C. 251, 274, 529 S.E.2d 28, 40 (Ct. App. 2000) ("A breach of covenant of good faith and fair dealing cannot stand if the party seeking damages has not performed under the contract"). Furthermore, "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). In other words, Crenshaw's failure to meet his contractual obligation to request a review hearing is dispositive of his breach of contract claim regardless of whether Erskine breached the implied covenant of good faith and fair dealing.

C. The jury's verdict based on a special verdict form does not preclude the judge from properly granting a JNOV motion.

If the Court deems Crenshaw's argument that a jury verdict based on a special verdict form precludes a proper JNOV to be appropriately before it, then a jury verdict made using a special verdict form does not preclude JNOV. First, the rules and a

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<sup>1</sup> Erskine cited *Swinton Creek's* holding that one who does not fulfill his own obligations under the contract cannot recover under the contract and its application of this holding to the implied covenant of good faith and fair dealing in its memorandum of law in support of its JNOV motion. (See R. p. 100.)

plethora of cases make clear that a jury verdict does not preclude a 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, 743-744 (Ct. App. 1990) ([A JNOV motion] “is available to one suffering an adverse ruling of the jury . . .”).

Crenshaw argues that *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653 (2006) supports his position that the court herein could not grant JNOV. Crenshaw’s argument has no merit. In *Erickson*, at the close of plaintiff’s case, the court and parties agreed to submit the issue of liability only to the jury without defendant presenting any evidence. *Id.* at 459-460, 661-662. The jury answered verdict interrogatories and found for the plaintiff. *Id.* at 461, 662. Then, the court denied defendant’s directed verdict motion. *Id.* In the case before this Court, that never happened. Herein, the trial court granted Erskine’s JNOV motion after the normal procedure of first denying Erskine’s directed verdict motion and sending the case to the jury. (R. p. 751, line 22-p. 752, line 6; R. p. 4; R. p. 85.) Also in *Erickson*, the court reopened the liability phase of the case and allowed the defendant to present evidence on liability. *Id.* The court then directed the jury that its prior findings on liability using the verdict interrogatories were advisory and could be reconsidered. *Id.* On appeal, the Supreme Court ruled the liability verdict was supported by the record. *Id.* at 480, 672.

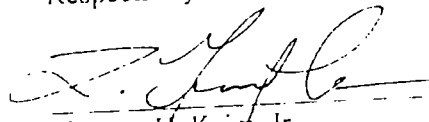
Herein, nothing of the sort occurred. The case ran a normal track, guided expertly by the trial judge, and based on undisputed testimony of Crenshaw himself, a JNOV was correctly entered.

### CONCLUSION

Based on the foregoing arguments and authorities the trial court properly granted Erskine JNOV because the undisputed evidence in the record confirms that Crenshaw breached the contract by not requesting a hearing. "It is an elementary principle that one who seeks to recover damages for the breach of a contract, to which he was a party, must show that the contract has been performed on his part. . . ." *Parks v. Lyons*, 219 S.C. 40, 48, 64 S.E.2d 123, 126 (1951). This basic tenant of contract law dictates that the trial court's Order granting JNOV must be affirmed.

September 28, 2016

Respectfully submitted,



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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

**RECEIVED**

SEP 29 2016

SC Court of Appeals

William Crenshaw,

Appellant,

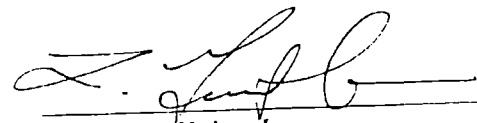
v.

Erskine College and David A. Norman,

Respondents.

Rule 211, SCACR Certification

I hereby certify that this Final Brief of Respondents complies with Rule 211(b),  
SCACR.



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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

---

Court of Appeals Case No. 2015-002090

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William Crenshaw, .....Appellant

v.

Erskine College and David Norman, ..... Respondents.

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**FINAL REPLY BRIEF OF APPELLANT**

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**TABLE OF CONTENTS**

Table of Contents.....1

Table of Authorities.....2

Argument

The trial court judge erred by granting Erskine College a judgment notwithstanding the verdict, finding that Dr. William Crenshaw breached his contractual obligation to Erskine College, even though the jurors, by special verdict form, expressly found (1) Dr. Crenshaw did not breach his obligation under the agreement and (2) Erskine College did breach its obligation under the agreement.....3

I. Dr. Crenshaw properly preserved his appellate arguments before the trial court to be heard by the appellate court.....3

II. The trial court erred. ....5

Conclusion.....6

TABLE OF AUTHORITIES

Cases

*Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011)..... 3

*State v. Johnson*, 363 S.C. 53, 609 S.E.2d 520 (2005) ..... 3

*Wilder Corp. v. Wilkie*, 330 S.C. 71, 497 S.E.2d 731 (1998) ..... 3

## ARGUMENT

The trial court judge erred by granting Erskine College a judgment notwithstanding the verdict, finding that Dr. William Crenshaw breached his contractual obligation to Erskine College, even though the jurors, by special verdict form, expressly found (1) Dr. Crenshaw did not breach his obligation under the agreement and (2) Erskine College did breach its obligation under the agreement.

### **I. Dr. Crenshaw properly preserved his appellate arguments before the trial court to be heard by the appellate court.**

Dr. Crenshaw raised the issue he argues in his appellate brief to the trial court that JNOV was not appropriate so the issue is properly preserved for appellate review.

The state's issue preservation rules require that an issue be raised and ruled upon by the trial court before it can be heard by the appellate courts. *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (citing *Wilder Corp. v. Wilkie*, 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." *Id.* "The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error." *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, \_\_\_ (2005).

Erskine College argues that Dr. Crenshaw failed to make the argument that the trial judge should not stray from the jury's findings by granting JNOV. This argument ignores that Dr. Crenshaw repeatedly requested the Court to uphold and then reinstate the jury's verdict in the post-trial proceedings.

In Plaintiff's Response to Defendant Erskine College's Motion for JNOV and in the Alternative for a New Trial, Dr. Crenshaw cited to the jury form and the jury's specific interrogatory findings that he did not breach the parties' agreement while Erskine College did. (Plaintiff's response to JNOV, R. 95.) At the hearing on Erskine College's motion, Dr. Crenshaw's counsel argued that the jury's verdict should be upheld because

the jury made specific findings that Crenshaw did not breach his obligations under the agreement, and Erskine College did breach its obligations. (JNOV hrg. R. 800, l. 22 - R.801, l. 3; R. 801, l. 21 - R. 802, l. 2.) Dr. Crenshaw's counsel specifically stated, "The jury was asked the questions.... They answered them and they were presented to them. Great deference is given to those answers." (JNOV hrg. R. 803, ll. 3-8.)

After the Court granted Erskine College a new trial, Dr. Crenshaw filed a motion to alter or amend that requested the Court to reinstate the jury's verdict. In this motion Dr. Crenshaw stated, "The jury specifically made findings that Crenshaw did not breach his obligation under the agreement and that Erskine College breached obligations under the agreement." (Plaintiff's motion to alter or amend, R. 102.) Dr. Crenshaw then argued that the record supported these specific findings by the jury so the trial court should give the verdict deference and reinstate it. (Plaintiff's motion to alter or amend, R. 103.)

Erskine College's argument that Dr. Crenshaw did not properly raise the issue that Erskine College breached its implied duty of good faith lacks merit. Dr. Crenshaw repeatedly argued throughout the trial and post-trial proceedings that Erskine College had violated its duties to Crenshaw in various ways. At trial, Dr. Crenshaw specifically argued that Erskine College violated the duty of good faith in the way it jumped between stages during the termination process: "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. 749, ll. 6-9.)

The record demonstrates that Dr. Crenshaw requested the trial court defer to the specific factual findings of the jury and reinstate its verdict. It also shows that Dr.

Crenshaw consistently argued, and the jury found, that Erskine breached its obligations under the parties' contract in various ways, including its duty of good faith. Crenshaw, therefore, adequately preserved these issues for review by the appellate court.

## **II. The trial court erred.**

Erskine College continues to rely on Dr. Crenshaw's supposed breach of the contract, but it cannot be overlooked that the jurors expressly found that Dr. Crenshaw did not breach his obligation under the agreement, and Erskine College breached its obligation under the agreement. R. 4. Furthermore, as discussed in his opening brief, at p. 21, Dr. Crenshaw was prepared to meet his obligations under the agreement by teaching classes during the fall semester. He returned to campus on August 6, 2011 to meet his freshmen classes.

The jurors' express finding that Erskine College breached its agreement with Dr. Crenshaw is supported by the eight examples of Erskine College's bad faith and unfair dealings with Dr. Crenshaw. *See* Appellant's Brief, pp. 21-24. In its brief, at pp. 14-15, Erskine College chose to address only the fifth example by arguing that "Norman did fix the time and place of the hearing for August 29, at 9 AM unless Crenshaw requested a reasonable adjustment." And, "Norman appeared for the hearing and waited for Crenshaw for three hours, but Crenshaw never arrived." Dr. Crenshaw never instructed Dr. Norman or Erskine College not to convene the hearing on August 29, 2011. Dr. Norman's letter of August 12, 2011, expressly represented to Dr. Crenshaw that the hearing would occur "unless you waive your right to a hearing." In fact, Dr. Crenshaw had every right to expect that the hearing would be convened at that time. Demonstrating Erskine College's ongoing bad faith, Dr. Norman never appointed the committee.

The trial court judge was required to view the evidence in a light most favorable to Dr. Crenshaw and deny Erskine College's motion for a JNOV if any reasonable inferences drawn from the evidence supported the jury's verdict. The record in this case supports the jury's finding that Dr. Crenshaw complied with his obligations under the agreement, and Erskine College breached its obligations.

This Court should reinstate the jurors' verdict.

### CONCLUSION

The trial court judge erred by granting Erskine College a judgment notwithstanding the verdict, finding that Dr. William Crenshaw breached his contractual obligation to Erskine College, even though the jurors, by special verdict form, expressly found (1) Dr. Crenshaw did not breach his obligation under the agreement and (2) Erskine College did breach its obligation under the agreement. This Court should reverse the trial court judge's order granting Erskine College a JNOV and reinstate the jury's verdict.

Respectfully Submitted,

By



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This 20<sup>th</sup> day of September 2016.