

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Opinion No. 2016-UP-402 (S.C. Ct. App. filed Aug. 17, 2016)
(Common Pleas Case No. 12-CP-02-01772)

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S.C. SUPREME COURT

Coves Darden, LLC, ... Petitioner,

v.

Francisco Jose Garcia Ibañez, Dori Derr and Half Moon Stables, LLC, ... Respondents.

APPENDIX
(Volume 2 of 2)

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 12-CP-02-01772

Coves Darden, LLC, ... Appellant,
v.

Francisco Jose Garcia Ibañez, Dori Derr and Half Moon Stables, LLC, ... Respondents.

RECORD ON APPEAL
(Including Certificate of Counsel and Stipulation)
Volume 2 of 2

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

Coves Darden, LLC,)

Plaintiff,)

v.)

Francisco Jose Garcia Ibañez,)
Dori Derr,)
and Half Moon Stables, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2012-CP-02-01772

**MOTION FOR STAY OF DISCOVERY;
ALTERNATIVE MOTION FOR
PROTECTIVE ORDER**

Defendants FRANCISCO JOSE GARCIA IBANEZ, DORI DERR and HALF MOON STABLES, LLC, move the Court for an Order staying further discovery pending ruling on the outstanding Motion for Summary Judgment, presently scheduled for further hearing on May 20, 2013. Alternatively, Defendants move the Court for a protective order directing that certain depositions noticed by Plaintiff for May 10, 2013, and May 13, 2013. This Motion is brought pursuant to Rules 26(c)(1)(b) and 26(d)(1) of the South Carolina Rules of Civil Procedure. In support thereof, Defendants respectfully state as follows:

At the hearing on Defendants' Motion for Summary Judgment and Plaintiff's Motion to Compel on March 5, 2013, the Court asked whether Plaintiff intended to claim the existence of a written contract of employment. The following colloquy then took place:

(Transcript of Proceedings, March 5, 2013, p. 8, l.9 - p. 9, l. 10)

THE COURT: I asked you a question. The question is a simple question. You said the written contract calls for arbitration. The other contract -- you made some statement. Is there another contract?

MR. STANTON: If there is no written contract which defendant contends there is not -- if there is no written contract, there is a verbal contract where the

parties fully understood the basis on which this man was going to work for them and even if one determined that that contract was an at-will relationship the black letter law of South Carolina is that employment at-will is contrary to what Mr. Derr argues contractual; that it is a contract. It is simply a contract which is terminable at will. There is still mutual consideration. One party agrees to work. The other agrees to---

THE COURT: Just tell me just which way you're proceeding. How about that? You're the moving party. You're the plaintiff.

MR. STANTON: Well, the way I would like to proceed first is to object procedurally to the motion; secondly, to ask that the motion if it's not denied outright be continued until we be given adequate opportunity for discovery. We have a pending motion to compel. One of the central figures in this is the Spanish national we referred to as Mr. Ibanez which is the very tail end of his name. He in some instances is called Garcia; sometimes Ibanez.

The Court then asked Plaintiff's counsel to specify the exact discovery he needed in order to respond to the Motion for Summary Judgment. In addition to asking for the deposition of Francisco Garcia, Plaintiff's counsel responded:

(Transcript of Proceedings, March 5, 2013, p. 8, l.9 - p. 9, l. 10)

MR. STANTON: May it please the court. Were we to take up our motion to compel?

THE COURT: What do you have to compel?

MR. STANTON: The deposition I think has been dispensed with, but there were some interrogatories and requests for production. I believe it is primarily 23 requests for production that the defendants objected to.

THE COURT: What do you want to be produced that would help you with the deposition of the individual in question?

MR. STANTON: We wanted records employment records pertaining to this man and the basis of his compensation and that goes to several issues, Your Honor, even though we're not required to attach them to specific issues. It goes to the dates during which he began to work gainfully for these people perhaps even during while he was working for our

people and it also goes to the Unfair Trade Practices Act claim in that he appears to have been offered an illegal situation in order to induce him away from our employment; namely, one that would violate the U.S. Immigration laws.

THE COURT: Sir, I just asked you what do you want.

MR. STANTON: I want the---

THE COURT: It is a simple question. You want the employment records and the basis of his compensation were the two things that you mentioned.

MR. STANTON: Five, seven, and eight of our requests for production.

THE COURT: What are five, seven, and eight, please?

MR. STANTON: Records of money paid to or on behalf of Ibanez or anything of value furnished to him whether it be food, lodging, legal services, tuition, use of horses, use of stables, use of transportation, or any other thing regardless of whether in an employment or contractual relationship.

Number seven: All applications or enlistments of Ibanez for participation in any competitions or shows or any applications or enlistments mentioning Ibanez as an expected or potential participant, and number eight was any other documents pertaining to the claims or defenses in the case that you intend to use and so forth. That one they made an objection that they didn't know what that might include; so they only produced his 100 pages of visa application. That's about the only thing they produced.

THE COURT: That might be all they have. All right. Mr. Young, y'all need to come up with his employment records, the basis of his compensation, any other documents in his personnel file. I assume that's what you got.

MR. YOUNG: I beg your pardon?

THE COURT: I assume that's what you have of record with him, if anything. You may not -- I don't know what you got.

MR. YOUNG: There are some employment records.

MR. DERR: Correct. There is an employment contract which has already been

produced.

THE COURT: I want his records produced within 15 days so they have time to look at it before the deposition.

MR. STANTON: And the applications to participate in shows as well, your Honor?

THE COURT: I'll put that in there -- show applications, whatever that means. Thank you.

Earlier in the hearing the Court indicated that once the documents had been produced and the deposition transcribed the Court would reconvene the hearing on the Motion for Summary Judgment:

(Transcript of Proceedings, March 5, 2013, p. 11. ll. 13 - 23)

Ibanez has to be made available for deposition within 30 days from March 5; i.e., April 5, 2013. Once that deposition is transcribed we'll reschedule. Mr. Young, just get in touch with me by everybody and we don't necessarily have to have a term of court. I can do it wherever I am. We'll reconvene the motion for summary judgment, but I am telling you if there is a contract and there is not any dispute over it, this arbitration clause is going to be an interesting issue. I'll put it like that.

All documents responsive to the Court's Order have been produced in a Supplemental Response to Request to Produce, Mr. Garcia has been deposed, and the transcript has been completed and delivered. As noted above, the reconvened hearing on the Motion for Summary Judgment is set for May 20, 2013.

Instead of awaiting a ruling from the court on a dispositive motion that will potentially save the time and expense of further discovery, Plaintiff has noticed a number of depositions that are unrelated to the sole issues presently before the Court: the nature of the relationship between the parties and the legal consequences of that relationship. Plaintiff noticed those depositions without clearing the dates with Defendants' counsel, and refuses to continue the dates, despite

the fact that undersigned counsel provided notice that he will be out of the country on the dates set for the depositions. Plaintiff's counsel has refused to set out exactly how these depositions relate to those issues, and has essentially taken the position that he has an absolute right to take the depositions without regard to the Order signed by the Court and without regard to the pending dispositive motion. Thus, Defendants are forced to file the instant Motions.

**THE COURT SHOULD STAY DISCOVERY UNTIL IT
HAS AN OPPORTUNITY TO RULE ON
A DISPOSITIVE MOTION**

Entry of an order staying discovery pending determination of a dispositive motion is an appropriate exercise of a court's discretion. *Chavous v D.C. Fin. Responsibility & Mgmt. Assistance Auth.*, 201 FRD 1 (D.C. Colo. 2001). In *Santos v. Bledsoe*, 2011 U.S. Dist. LEXIS 94261 (M.D. Pa. 2011), the court noted:

"Certain basic principles, however, guide the exercise of this discretion. One of these cardinal principles, governing the exercise of discretion in this field, is that the district court may properly defer or delay discovery while it considers a potentially dispositive pretrial motion, provided the district court concludes that the pretrial motion does not, on its face, appear groundless. See, e.g., *James v. York County Police Department*, 160 F. App'x 126, 136 (3d Cir. 2005); *Nolan v. U.S. Department of Justice*, 973 F.2d 843, 849 (10th Cir. 1992); *Johnson v. New York Univ. Sch. of Ed.*, 205 F.R.D. 433, 434 (S.D.N.Y. 2002). Briefly deferring discovery in such a case, while the Court determines the threshold issue of whether a complaint has sufficient merit to go forward, recognizes a simple, fundamental truth: *Parties who file motions which may present potentially*

meritorious and complete legal defenses to civil actions should not be put to the time, expense and burden of factual discovery until after these claimed legal defenses are addressed by the Court.” (emphasis added)

“[A] stay of discovery is appropriate pending resolution of a potentially dispositive motion where the motion appear[s] to have substantial grounds or, stated another way, do[es] not appear to be without foundation in law.” *In re Currency Conversion Fee Antitrust Litigation*, 2002 U.S. Dist. LEXIS 974 (S.D.N.Y. 2002) (quoting *Chrysler Capital Corp. v. Century Power Corp.*, 137 F.R.D. 209, 209-10 (S.D.N.Y.1991)); *Anti-Monopoly, Inc. v. Hasbro, Inc.*, 1996 U.S. Dist. LEXIS 2684 (S.D.N.Y. 1996)).

The pending dispositive motion for summary judgment is based on Plaintiff’s own judicial admissions. While Defendants contend that testimony from Mr. Garcia is not required in light of those admissions, Mr. Garcia has, in fact, been deposed, so Plaintiff can have no complaint on that basis. Additionally, all documents covered by the Court’s discovery Order have been produced.

**ALTERNATIVELY, THE COURT SHOULD ISSUE
A PROTECTIVE ORDER PROHIBITING DISCOVERY
PENDING RULING ON THE MOTION
FOR SUMMARY JUDGMENT**

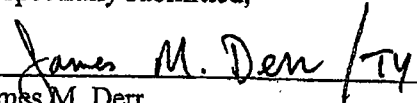
A Protective Order is properly issued pursuant to Rule 26(c) when there is a dispositive motion pending and the proposed discovery exceeds the scope of matters at issue in the Motion. *See Cassie M. v. Chafee*, 2013 U.S. Dist. LEXIS 1362 (D.R.I. 2013).

In this case, the proposed depositions can add nothing to resolution of the issues before the court. Plaintiff has already made a judicial admission that there was no oral contract of

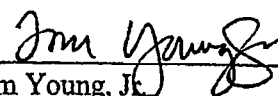
employment. Plaintiff has also been allowed to conduct a free-ranging deposition of Mr. Garcia which included examination regarding his knowledge of a written contract of employment. Plaintiff has now filed a self-serving Affidavit of Miguel Coves that appears to contradict the existence of a written contract and vaguely refers to some alleged oral agreement, which Plaintiff has already denied the existence of.

For the foregoing reasons, and each of them, Defendants respectfully request that the Motions be granted as prayed for herein.

Respectfully submitted,


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(340) 244-2566
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Respectfully submitted,


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(803) 649-0000
tyoung@tomyounglaw.com

Date: 5/03/13

Aiken, South Carolina

Statement of non-appearance for the scheduled deposition of Diana Hunt, dated May 10, 2013,
pages 3-5, and Exhibit 1

1 (Plaintiff's Exhibit Number One was marked for
2 identification purposes.)

3 MR. STANTON: I just want to go ahead and make a
4 record. Today is May 10th, 2013, and we're
5 here for the 1 o'clock deposition of a
6 non-party witness by the name of Diana Hunt.
7 It is now about 1:30. We've waited about a
8 half hour. There has been no communication
9 from Ms. Hunt at all concerning the deposition.
10 We're just going to mark and attach to this
11 short transcript as a composite Exhibit,
12 Plaintiff's Exhibit Number 1, the April 24th,
13 2013 letter that I sent to opposing counsel
14 duly noticing the deposition, and explaining
15 that, if there was any issue with the schedule,
16 to please contact me regarding an alternate
17 schedule. I'll state for the record that
18 opposing counsel has informed me that this date
19 does not work, but have informed me that they
20 refused to provide an alternate date, namely
21 they refused to go forward with any deposition
22 or cooperate on any type of scheduling, and
23 sometime before or after the notices of these
24 depositions went out, they file a Motion to
25 Stay Discovery or for a Protective Order, which

1 Motion has not been heard, and therefore,
2 certainly, has not been granted, and the merits
3 of that motion, we won't go into now. At part
4 of that Plaintiff's Exhibit 1, is the Notice of
5 Deposition, which was served by mail on that
6 same date, April 24th, 2013. The witness in
7 question is one Diana Hunt whose deposition was
8 noticed for 1 o'clock p.m. today, Friday, May
9 10th. Further back in that composite exhibit
10 is a copy of the Subpoena which was served on
11 Ms. Hunt dated May 1st, 2013 directing the
12 witness/deponent to appear for a deposition
13 only, not to produce any documents or anything
14 else, just to show up, and stating the time of
15 the deposition as 1 o'clock p.m., Friday, May
16 10th, 2013. And finally, the last thing in
17 that composite exhibit is the Proof of Service
18 of the Subpoena on Ms. Hunt by a process server
19 named Rodger Sharpe showing that the service
20 was affected on May 1st, 2013 at sometime in
21 the evening by personal hand delivery to the
22 witness, and of course, the purpose of this
23 transcript is to let the record reflect that
24 with no order, excuse, continuance,
25 postponement or cancellation, the witness has

1 ignored the Subpoena, apparently, unless maybe
2 some -- I hope nothing terrible has happened to
3 her, but the witness is not her. So, we will
4 adjourn.

5 (Whereupon, the Statement of Non-Appearance concluded
6 at 1:35 o'clock p.m.)
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STANTON LAW OFFICES, P.A.

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April 24, 2013

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ATTORNEY AT LAW

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Aiken SC 29802

Re: **Coves Darden, LLC v. Francisco Jose Garcia Ibañez, Dori Derr and Half Moon Stables, LLC**
Aiken County Court of Common Pleas
Case No.: 12-CP-02-01772

Dear Tom:

We enclose a copy of a notice of depositions.

Tom, we have picked a Friday and a Monday, which I understand to be generally your best days, in order to get this rolling. Additionally, in light of our experience in trying for three or four months to schedule the deposition for Mr. Ibañez, in which time, among other things, we were unable to obtain any dates from the defendants without court order, I have had to pick times feasible for me.

If there are problems with counsel's schedule, please let me know very promptly and please be prepared to stipulate to a new schedule. We will determine the feasibility of a change. As you have indicated a desire to pursue summary judgment before we have had an opportunity to do the discovery we think warranted, we will also have to take that timing into account.

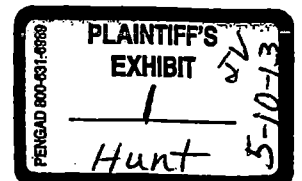
Finally, please be mindful that, as we may have to subpoena some of the deponents, a rescheduling would not be as simple as looking at lawyers' schedules once subpoenas have gone out.

With kind regards,

Yours very truly,


M. Baron Stanton

MBS:gsm
Enclosure



STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Coves Darden, LLC,

Plaintiff,

v.

Francisco Jose Garcia Ibañez,
Dori Derr,
and Half Moon Stables, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

NOTICE OF DEPOSITIONS

TO DEFENDANTS: Please take notice that Plaintiff will take the depositions of the following witnesses at the times, dates and places stated below.

Witness: Juan Buccio
Time: 10:00 a.m.
Date: Friday, May 10, 2013
Place: Harlow Law Office, P.A.
104 Park Avenue, SW
Aiken, SC 29801

Witness: Marcos [last name unknown]
Time: 11:00 a.m.
Date: Friday, May 10, 2013
Place: Harlow Law Office, P.A.
104 Park Avenue, SW
Aiken, SC 29801

Witness: Diana Hunt
Time: 1:00 p.m.
Date: Friday, May 10, 2013
Place: Harlow Law Office, P.A.
104 Park Avenue, SW
Aiken, SC 29801

Witness: Lexi Harrison
Time: 2:00 p.m.
Date: Friday, May 10, 2013
Place: Harlow Law Office, P.A.
104 Park Avenue, SW
Aiken, SC 29801

Witness: David Harrison
Time: 3:00 p.m.
Date: Friday, May 10, 2013
Place: Harlow Law Office, P.A.
104 Park Avenue, SW
Aiken, SC 29801

Witness: Manuel Pena
Time: 4:00 p.m.
Date: Friday, May 10, 2013
Place: Harlow Law Office, P.A.
104 Park Avenue, SW
Aiken, SC 29801

Witness: Half Moon Stables, LLC
Time: 10:00 a.m.
Date: Monday, May 13, 2013
Place: Harlow Law Office, P.A.
104 Park Avenue, SW
Aiken, SC 29801

This deposition of Half Moon shall be taken pursuant to Rule 30(b)(6) and the deponent is admonished that it shall have a duty prior to the deposition to designate one or more witnesses authorized to testify on its behalf regarding the full extent of the organization's knowledge (after reasonable research and inquiry) on the following issues, topics, or subjects:

1. The date on which the first contact was made with Miami immigration counsel to explore engaging him to change the visa for Ibañez;
2. The date on which engagement of said counsel was confirmed;

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Coves Darden, LLC,

Plaintiff,

v.

Francisco Jose Garcia Ibañez,
Dori Derr,
and Half Moon Stables, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

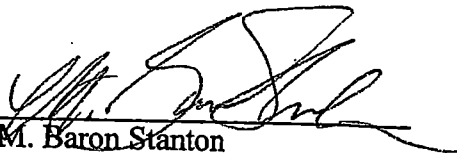
CERTIFICATE OF SERVICE

The undersigned certifies that the undersigned served on this date a copy of the foregoing on the following, by causing a copy to be mailed, by first class mail, with proper postage affixed, and addressed as follows, to the following addressee(s):

Thomas L. Young, Jr., Esquire
409 Park Avenue SW
Post Office Box 651
Aiken, SC 29802

Date: _____

4/24/13


M. Baron Stanton

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF AIKEN

Noves-Darden, LLC, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

Francisco Jose Garcia Ibanez,
Dori Derr, and Half Moon Stables, Defendant.

Case Number: 12-CP-02-01772

Pending in Aiken County

TO: Diana Hunt

YOU ARE COMMANDED to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

X YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

Harlow Law Office, P.A.
104 Park Avenue, SW
Aiken, SC 29801

Friday, May 10, 2013 at 1:00 p.m.
and any agreed reschedulings or continuations

PLACE OF DEPOSITION

DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

Application submitted by Dori Derr, Half Moon Stables, Aiken, South Carolina, for entry in the Summer Highland Fling held at Foothills Equestrian Nature Center in Tryon, North Carolina on June 21 & 22, 2012.

PLACE

DATE AND TIME

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(B)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

M. Baron Stanton, Stanton Law Offices, P.A., 1728 Main Street, P.O. Box 245, Columbia, SC 29202, 803-929-1484

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(C)(1) AND THAT NOTICE AS REQUIRED BY RULE 45(B)(1) HAS BEEN GIVEN TO ALL PARTIES.

DATE 5/11/13

SCCA FORM 254 (7/93)
Reverse)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on

(c) PROTECTION OF PERSONS TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for and order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- (I) fails to allow reasonable time for compliance; or
- (II) requires a person who is not a party or an officer, director or managing agent of a party to travel more than 50 miles from the county where the person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(III) of this rule, such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or
- (III) requires disclosure or privileged or otherwise protected matter and no exception or waiver applies; or
- (IV) subjects a person to undue burden.

(B) If a subpoena:

- (I) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (II) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (III) requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearances or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Stanton discovery status affidavit, dated May 14, 2013

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Coves Darden, LLC,

Plaintiff,

v.

Francisco Jose Garcia Ibañez,
Dori Derr,
and Half Moon Stables, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

**STANTON DISCOVERY
STATUS AFFIDAVIT**

Comes before me, M. Baron Stanton, who, being duly sworn, deposes and says:

1. I am personally familiar with the matters in this affidavit and I make this affidavit for the purpose of conveniently summarizing and presenting miscellaneous matters pertaining to the status of discovery in this case. This affidavit is submitted in opposition to any motion for summary judgment by any defendant, and for any other purpose for which it may be useful.
2. In her deposition of January 14, 2013, at pages 81-82, Ms. Derr testified that, other than an isolated incident in April, 2012, Ibañez had never ridden a horse of hers again before August 1, 2012, the date she said he was hired. She qualified this testimony by stating that at least, if he had done so, it would have been without her knowledge, in her absence, and that she would not have minded if he did. These pages of the deposition are attached. She later stated at pages 105-108 she was wrong about the date he was hired.
3. At one recent point in this case, we received the March 20, 2013 production of documents from Defendants as a result of the Court's March, 2013, order compelling discovery. It included materials referred to as "Francisco's scores, checks to Francisco, and SCE&G bills."

I followed up by e-mail with counsel for Defendants. I acknowledged that I knew, of course, that a party cannot produce what a party does not have. However, I pointed out that one of the discovery requests in question had not requested "scores," but rather, "applications" or enrollment forms for horse riding competitions, and other materials. I asked that Defendants re-check and assure that the materials produced were a full and accurate response.

4. We recently sent a subpoena to the Good Horseman Foundation, requesting a copy of any application filed by Derr, Half Moon, or Ibañez which involved Ibañez as a rider during a competition in July of 2012. Attached are the materials we received in response to the subpoena. The materials are an application dated June 20, 2012, listing Derr as an applicant and Ibañez as a rider of Derr's horse, Tomillo VII. The event was to occur in July of 2012.

5. We recently sent a subpoena to the NCDCTA (North Carolina Dressage and Combined Training Association), seeking similar applications involving Derr, Ibañez, or Half Moon for the Summer Highland Fling held in Tryon, North Carolina in or around June 23 and 24, 2012. Attached are the materials we received in response to the subpoena. They indicate that on June 2, 2012, Derr registered Ibañez to ride her horse, Tomillo VII, later that month. The form bears the signature of Dori Derr, and lists as the e-mail address for Ibañez, jmderrrlaw@gmail.com.

6. My office searched the web for scores of Francisco Garcia Ibañez from the Summer Highland Fling held in Tryon, North Carolina in June of 2012, and found the scores which are attached to this affidavit. This record of scores from an event in which Ibañez participated in June of 2012, was not produced by Defendants when they recently, on March 20, 2013, produced materials described as "Francisco's scores."

7. In the materials produced on March 20, 2013, Defendants produced a check from James M. Derr and Dori P. Derr, dated July 10, 2012, made payable to the order of Francisco Garcia, in the amount of \$3,000.

8. On or around December 17, 2012, Defendants produced limited materials in response to initial requests for production. These materials included a letter dated June 1, 2012 from Antonia Canero, a Miami immigration lawyer, along with accompanying materials seeking a "change of employer" for Francisco Garcia Ibañez under the O-1 visa which had previously been obtained by Coves Darden.

9. Also included in the materials was a check dated June 5, 2012 remitted by James M. Derr, and issued by and drawn upon Security Federal Bank in Aiken. The check was made out to the Department of Homeland Security.

10. Also included in the materials were a form G-28, dated June 1, 2012, on which Mr. Derr entered an appearance as the representative of Half Moon Stables, LLC. On the forms submitted to the U.S. Citizenship and Immigration Services division of the Department of Homeland Security, Mr. Derr signed on behalf of the Petitioner, Half Moon Stables, LLC.

11. Also included in the limited materials produced by Half Moon was an employment contract between Half Moon and Ibañez, dated August 1, 2012.

12. The December 17, 2012 responses to request for production did not include the December 10, 2012 affidavit of Ibañez, nor the materials attached to it.

13. The Plaintiff's January 30, 2013 motion to compel and the February 26, 2013 Rule 56(f) affidavit detail some of the earlier difficulties Plaintiff experienced in obtaining the deposition of Defendant Ibañez. The last time the deposition was re-noticed before the motion to

compel was heard, the duly noticed time and date of the deposition was February 22, 2013.

Without having obtained, nor even filed, a motion for protective order, Ibañez, who is a party in this suit, did not appear for the deposition. On file, or to be filed with the court, is the transcript of this "non-deposition" outlining the circumstances of the non-appearance. This effort to obtain the deposition of Ibañez, and the previous, numerous, attempts to schedule the deposition, schedule a place for the deposition, and schedule a paid translator for the deposition, have caused Plaintiff to incur considerable expense. Plaintiff was forced to make these efforts while having to prepare Plaintiff's opposition to Defendants' motion for summary judgment.

14. On or about April 24, 2013, Plaintiff duly gave notice of the intent to take the depositions of Juan Bucio, Marcos [last name unknown], Diana Hunt, Lexi Harrison, David Harrison, and Manuel Pena on Friday, May 10, 2013. Before the deposition, I communicated by e-mail with counsel for the Defendants, requesting updated discovery responses concerning the identities and contact information for witnesses. Bucio had been listed as a witness by Defendants in their responses to initial interrogatories in the case. Lexi Harrison and David Harrison were also listed as witnesses in those interrogatory responses. Only a partial address was listed for Bucio. No contact information was listed for Lexi Harrison or David Harrison. In her January 14, 2013 deposition, Ms. Derr described events or conversations involving Bucio. She also described events or conversations involving Lexi Harrison and David Harrison. She also described a person who worked at Half Moon Stables by the name of Marcos, referring to him as perhaps the only actual paid employee of Half Moon Stables, LLC other than Ibañez. The notice of deposition also set a deposition of Half Moon Stables, LLC for the following Monday, May 13, 2013, pursuant to Rule 30(b)(6), SCRCF. Pursuant to that rule, the subjects and issues

of requested testimony were presented. These included the question of when Miami immigration counsel was first contacted concerning changing the employer on Ibañez' visa from Coves Darden Farm, LLC to Half Moon Stables, LLC. The requested subjects of testimony also included which clinics (horse riding instructional clinics) Ibañez had conducted on his own, off the premises of Half Moon Stables, and how the money was handled.

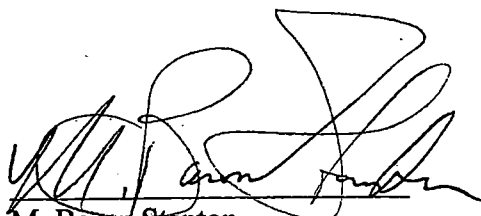
15. Not having received any updated contact information for Marcos, Lexi Harrison, or David Harrison, I informed counsel for Defendants that we could not make arrangements in time for them to be deposed on May 10, 2013. I also informed them that Manuel Pena would not be deposed, because I understood he was in Spain. I also informed counsel for Defendants that the deposition for Juan Bucio might be deferred or postponed. In these communications, counsel for Defendants informed me that neither intended to appear for any depositions on May 10, 2013. No alternative proposed dates were provided and no sort of rescheduling of any sort was requested.

16. On May 10, 2013, I traveled an hour to Aiken for the deposition of Diana Hunt, a nonparty witness, which remained duly noticed for the date and time at which I appeared. Ms. Hunt had been subpoenaed for the deposition. Not only did counsel for Defendants not show up (consistent with what they had informed me), but Diana Hunt did not show up either. A transcript of the circumstances of the "non-deposition" of Ms. Hunt will be filed with the court. I have received no communication whatsoever from Ms. Hunt concerning the non-appearance.

17. On Monday, May 13, 2013, at the duly noticed place and time for the 30(b)(6) deposition of Half Moon Stables, LLC, no witness for Half Moon appeared. The circumstances

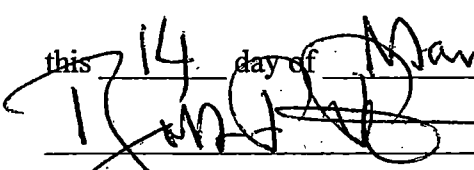
of the "non-deposition" of Half Moon are recorded in a transcript which will be filed with the court. Half Moon is a party opponent in this case.

18. The August 1, 2012 contract produced by Defendants includes a clause allowing Ibañez to make earnings from others on the side and the ability of Half Moon to get a credit for these earnings against a minimum amount of compensation promised to him by Half Moon under the contract.


M. Baron Stanton

SWORN TO AND ACKNOWLEDGED TO ME

this 14 day of May, 2013.


(L.S.)

Notary Public of South Carolina

My Commission Expires: 9/27/2021

Re: **STANTON LAW OFFICES, P.A.**

POST OFFICE BOX 245
COLUMBIA, SOUTH CAROLINA 29202

April 23, 2013

TELEPHONE 803-929-1484
TELECOPIER/FAX 803-929-0534

M. BARON STANTON
ATTORNEY AT LAW

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED
RECEIPT NO. 2560 0000 6883 5173

The Massey Ferguson Foundation
Mr. [Name] Director
1907 [Address] #297
Post Office Box 29201

Re: **Coves Darden, LLC v. Francisco Jose Garcia Ibañez, Dori Derr and Half Moon**
LLC
[County] County Court of Common Pleas
Case No. 12-CP-02-01772

Dear Mr. [Name]:

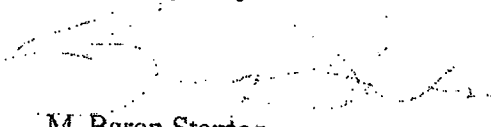
Enclosed is a copy of a Subpoena for Records. You may certainly comply in person, but as mentioned in the subpoena, you may choose to mail the required documents to us.

The document requested is an entry form for participation in the Massey Ferguson Summer Drivage Show in Conyers, Georgia in July, 2012. If the entry form has credit card information on it, please feel free to mark this out before sending the form.

Please call me with any questions or concerns you may have regarding this request, and let us know if there are any postage or copying charges.

With kind regards,

Yours very truly,


M. Baron Stanton

MBS:gsm
Enclosure

cc w/encl.: Thomas R. Young, Jr., Esquire

Updated EATY
reflecting
Intermediare II
only.

Pre-
USOF / USOF
Cards
Health Certificate

955

ENTRY FORM

OFFICE USE ONLY

Date Rec'd 6-26-72

Amt ✓ 1.22

Coggins 1/14 HC

Signatures :

Other needs:

Francisco Jose Garcia
Rider _____
Jr/YR Date of Birth _____
Street Address Trail
2820 Old 96 Indian
Wagener, SC
City, State, ZIP 2 9164
Phones: 803 507 3694 cell home
803 564 6919 home work
E-mail (please print):
davidern@gmail.com
USEF card (enclose copy):

Owner
Dori Derr
Street Address
2820 Old 96
Indian Trail
City, State, ZIP
Wagener, SC 29164
Phones:
803-564-6919 home
803-507-3694 cell
E-mail (please print):
doriderr@gmail.com
USEF card (enclose copy):
USEF card (enclose copy):

Trainer (person responsible for horse)
Street Address
City, State, ZIP
Phones: _____ home _____ work
E-mail (please print): _____
USEF card (enclose copy):

Coach (for paid instruction at show)

Street Address

City, State, ZIP

Phones: _____ home
_____ work

E-mail (please print): _____

USEF card (enclose copy):

Horse's Name TOMILLO VII ☐ check if for sale
Breed PRE Sex S Height 16.1 Color Torta Year foaled 2000
Horse's USEF No. (include copy) _____
Horse's USDF No. (include copy) _____
Name of Sire Presumptive
Name of Dam Isabel
Name of Dam's Sire Barro Paroliers
Breeder los Albarjos Country where foaled Spain
Arriving (circle one) What day? ☒ Wed ☐ Thur ☐ Fri ☐ Sat ☐ Sun.
Leaving (circle one) What day? ☒ Saturday ☐ Sunday
Stabling: For large groups, make stabling map and attach to entry form.
Please use one name for groups.
Group Name: _____
If you are traveling from out of state, don't forget horse's health certificate copy. Fill out separate form for non-competing horse.

**ENTRIES WILL NOT BE ACCEPTED WITHOUT
ALL SIGNATURES ON FOLLOWING PAGE—EVEN IF IT IS THE SAME
PERSON. BOTH PAGES REQUIRED FOR ENTRY.**

Visa/MC No. _____
Exp. date _____ \$10 EFT Fee _____
Name on card _____
Zip Code where credit card statement is received _____

Day	Class Code	Class Description	Fees
Mon	710	Intro to Training II Q	50.00
Tue	400	Intro to Training I Q	50.00
Wed	720	Intro to Training II Q	50.00
Thu	400	Intro to Training I Q	50.00
Total Class Fees			
USEF Non-Member fee (\$30.00 per rider, owner, trainer, coach)			
USDF Non-Member fee (25.00) per rider and owner			
USEF Federation Fee Per Horse (D&M fee \$8.00)			\$16.00
USDF Horse ID (HID) number fee \$25 (for unregistered horses)			
Stabling Fee (See STABLING)			150.00
Tack Stall Fee (\$65.00/weekend)			130.00
Extra shavings delivered at \$7.00 per bag (How many bags? _____)			
Late Fee \$20.00 per entry (for entries accepted after closing date)			
Office Fee (per entry)			\$25.00
Camper Hook-up (\$35.00/night) (How many nights? _____)			
Tag No. or description _____			
Night Watch fee per horse for weekend (Mandatory for overnight)			\$7.00
Refundable "Perfekt Paket" Fee (see requirements Page 3) Entry must be complete on first receipt for refund.			\$20.00
EMT Fee (per entry)			\$3.00
GHF 2012 Membership/\$30 (optional—see Membership Page.)			
Total			501.00

Entry No.

The Good Horseman® Dressage Shows

ENTRY FORM

Entries may not be accepted without all signatures, full payment of fees and copies of all certification including USEF/USDF cards and Coggins and USDF horse recording and/or registration certificates. Those entering qualifying classes should read the USDF Regional Championships information page included in this prize list. One entry form per horse/rider combination.

OFFICE USE ONLY

Date Rec'd 7-12-12Aml. Use

Coggins _____ HC _____

Signatures _____

Other needs _____

USEF Level 3 Competition A "fillable" entry form is posted on our website's Calendar page.

Rider <u>Francisco Garcia</u> Jr/YR Date of Birth Street Address <u>2820 Old 96 Indian Trail</u> City, State, ZIP <u>Wagener SC 29164</u> Phones: <u>803 564 6919</u> home <u>803 507 3694</u> work E-mail (please print): <u>doriderr@gmail.com</u> USEF card (enclose copy): USDF card (enclose copy):		Owner <u>Dori Derr</u> Street Address <u>2820 Old 96 Indian Trail</u> City, State, ZIP <u>Wagener SC 29164</u> Phones: <u>803 564 6919</u> home <u>803 507 3694</u> work E-mail (please print): <u>doriderr@gmail.com</u> USEF card (enclose copy): USDF card (enclose copy):		Trainer (person responsible for horse) <u>Don Derr</u> Street Address <u>2820 Old 96 Indian Trail</u> City, State, ZIP <u>Wagener SC 29164</u> Phones: <u>803 564 6919</u> home <u>803 507 3694</u> work E-mail (please print): <u>doriderr@gmail.com</u> USEF card (enclose copy):		Coach (for paid instruction at show) Street Address City, State, ZIP Phones: E-mail (please print): USEF card (enclose copy):	
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STABLING and HORSE INFORMATION FORM			
Horse's Name <u>Tomillo VII</u> ☐ check if for sale Breed <u>PRE</u> Sex <u>S</u> Height <u>16.1</u> Color <u>grey</u> Year foaled <u>2000</u> Horse's USEF No. (include copy) <u>5171974</u> Horse's USDF No. (include copy) <u>1086906</u> Name of Sire _____ Name of Dam _____ Name of Dam's Sire _____ Breeder <u>Los Abuelos</u> Country where foaled <u>Spain</u> Arriving (circle one) What day? <u>Wed</u> <u>Thur</u> <u>Fri</u> <u>Sat</u> <u>Sun</u> Leaving (circle one) What day? <u>Saturday</u> <u>Sunday</u> Stabling: For large groups, make stabling map and attach to entry form. Please use one name for groups. Group Name: <u>Hidden Spring - if attending</u> If you are traveling from out of state, don't forget horse's health certificate copy. Fill out separate form for non-competing horse.			

ENTRIES WILL NOT BE ACCEPTED WITHOUT ALL SIGNATURES ON FOLLOWING PAGE—EVEN IF IT IS THE SAME PERSON. BOTH PAGES REQUIRED FOR ENTRY.																																																																																	
Visa/MC No. _____ Exp. date _____ \$10 EFT Fee _____ Name on card _____ Zip Code where credit card statement is received _____	<table border="1"> <thead> <tr> <th>Day</th> <th>Class Code</th> <th>Class Description</th> <th>Fees</th> </tr> </thead> <tbody> <tr> <td>Sat</td> <td>FEI Q</td> <td>720 Intermediate II</td> <td>50.00</td> </tr> <tr> <td>Sun</td> <td>FEI Q</td> <td>920 Intermediate II</td> <td>50.00</td> </tr> <tr> <td colspan="3">Total Class Fees</td> <td></td> </tr> <tr> <td colspan="3">USEF Non-Member fee (\$30.00 per rider, owner, trainer, coach)</td> <td>/</td> </tr> <tr> <td colspan="3">USDF Non-Member fee (25.00) per rider and owner</td> <td>/</td> </tr> <tr> <td colspan="3">USEF Federation Fee Per Horse (D&M fee \$8.00)</td> <td>\$16.00</td> </tr> <tr> <td colspan="3">USDF Horse ID (HID) number fee \$25 (for unregistered horses)</td> <td>/</td> </tr> <tr> <td colspan="3">Stabling Fee (See STABLING) <u>STATION</u></td> <td>100.00</td> </tr> <tr> <td colspan="3">Tack Stall Fee (\$65.00/weekend)</td> <td>65.00</td> </tr> <tr> <td colspan="3">Extra shavings delivered at \$7.00 per bag (How many bags? _____)</td> <td></td> </tr> <tr> <td colspan="3">Late Fee \$20.00 per entry (for entries accepted after closing date)</td> <td></td> </tr> <tr> <td colspan="3">Office Fee (per entry)</td> <td>\$25.00</td> </tr> <tr> <td colspan="3">Camper Hook-up (\$35.00/night) (How many nights? _____)</td> <td></td> </tr> <tr> <td colspan="3">Tag No. or description</td> <td>7.00</td> </tr> <tr> <td colspan="3">Night Watch fee per horse for weekend (Mandatory for overnight)</td> <td>\$5.00</td> </tr> <tr> <td colspan="3">Refundable "Perfekl Paket" Fee</td> <td>\$20.00</td> </tr> <tr> <td colspan="3">EMT Fee (per entry)</td> <td>\$3.00</td> </tr> <tr> <td colspan="3">GHF 2012 Membership/\$30 (optional—fill out form Page 19)</td> <td></td> </tr> <tr> <td colspan="3">Total</td> <td>336.00</td> </tr> </tbody> </table>	Day	Class Code	Class Description	Fees	Sat	FEI Q	720 Intermediate II	50.00	Sun	FEI Q	920 Intermediate II	50.00	Total Class Fees				USEF Non-Member fee (\$30.00 per rider, owner, trainer, coach)			/	USDF Non-Member fee (25.00) per rider and owner			/	USEF Federation Fee Per Horse (D&M fee \$8.00)			\$16.00	USDF Horse ID (HID) number fee \$25 (for unregistered horses)			/	Stabling Fee (See STABLING) <u>STATION</u>			100.00	Tack Stall Fee (\$65.00/weekend)			65.00	Extra shavings delivered at \$7.00 per bag (How many bags? _____)				Late Fee \$20.00 per entry (for entries accepted after closing date)				Office Fee (per entry)			\$25.00	Camper Hook-up (\$35.00/night) (How many nights? _____)				Tag No. or description			7.00	Night Watch fee per horse for weekend (Mandatory for overnight)			\$5.00	Refundable "Perfekl Paket" Fee			\$20.00	EMT Fee (per entry)			\$3.00	GHF 2012 Membership/\$30 (optional—fill out form Page 19)				Total			336.00
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By entering a Federation-licensed Competition and signing this entry blank as the Owner, Lessee, Trainer, Manager, Agent, Coach, Driver, Rider, Handler, Vaulteur or Longeur and on behalf of myself and my principals, representatives, employees and agents, I agree that I am subject to the Bylaws and Rules of The United States Equestrian Federation, Inc. (the "Federation") and the local rules of (Competition). I agree to be bound by the Bylaws and Rules of the Federation and of the competition. I will accept as final the decision of the Hearing Committee on any question arising under the Rules, and agree to release and hold harmless the competition, the Federation, their officials, directors and employees for any action taken under the Rules. I represent that I am eligible to enter and/or participate under the Rules, and every horse I am entering is eligible as entered. I also agree that as a condition of and in consideration of acceptance of entry, the Federation and/or the Competition may use or assign photographs, videos, audios, cable-casts, broadcasts, internet, film, new media or other likenesses of me and my horse taken during the course of the competition for the promotion, coverage or benefit of the competition, sport, or the Federation. Those likenesses shall not be used to advertise a product and they may not be used in such a way as to jeopardize amateur status. I hereby expressly and irrevocably waive and release any rights in connection with such use, including any claim to compensation, invasion of privacy, right of publicity, or to misappropriation. The construction and application of Federation rules are governed by the laws of the State of New York, and any action instituted against the Federation must be filed in New York State. See GR908.4.

I AGREE in consideration for my participation in this Competition to the following:

I AGREE that the "Federation" and "Competition" as used herein includes the Licensee and Competition Management, as well as all of their officials, officers, directors, employees, agents, personnel, volunteers and Federation affiliates.

I AGREE that I choose to participate voluntarily in the Competition with my horse, as a rider, driver, handler, vaulteur, longeur, lessee, owner, agent, coach, trainer, or as parent or guardian of a junior exhibitor. I am fully aware and acknowledge that horse sports and the Competition involve inherent dangerous risks of accident, loss, and serious bodily injury including broken bones, head injuries, trauma, pain, suffering, or death. ("Harm").

I AGREE to hold harmless and release the Federation and the Competition from all claims for money damages or otherwise for any Harm to me or my horse and for any Harm of any nature caused by me or my horse to others, even if the Harm arises or results, directly or indirectly, from the negligence of the Federation or the Competition.

I AGREE to expressly assume all risks of Harm to me or my horse, including Harm resulting from the negligence of the Federation or the Competition.

I AGREE to indemnify (that is, to pay any losses, damages, or costs incurred by) the Federation and the Competition and to hold them harmless with respect to claims for Harm to me or my horse, and for claims made by others for any Harm caused by me or my horse while at the Competition. I have read the Federation Rules about protective equipment, including GR801 and, if applicable, EV114, and I understand that I am entitled to wear protective equipment without penalty, and I acknowledge that the Federation strongly encourages me to do so while WARNING that no protective equipment can guard against all injuries. If I am a parent or guardian of a junior exhibitor, I consent to the child's participation and AGREE to all of the above provisions and AGREE to assume all of the obligations of this Release on the child's behalf I represent that I have the requisite training, coaching and abilities to safely compete in this competition.

I AGREE that if I am injured at this competition, the medical personnel treating my injuries may provide information on my injury and treatment to the Federation on the official USEF accident/injury report form.

BY SIGNING BELOW, I AGREE to be bound by all applicable Federation Rules and all terms and provisions of this entry blank and all terms and provisions of this Prize List. If I am signing and submitting this Agreement electronically, I acknowledge that my electronic signature shall have the same validity, force and effect as if I affixed my signature by my own hand. BOD 1/23/11 Effective 12/1/11

Rider/Driver/Handler/
Vaulteur/Longeur (mandatory)

Owner/Agent (mandatory)

Trainer (mandatory)

Coach (if applicable)

Signature: [Signature]

Signature: [Signature]

Signature: [Signature]

Signature: _____

Print Name: FRANCISCO CASCIA

Print Name: JOHN DEER

Print Name: [Signature]

Print Name: _____

Date of signing: June 10, 2012

Parent/Guardian Signature: _____

(Required if Rider/Driver/Handler/Vaulteur/Longeur is a minor)

Print Parent/Guardian Name: _____

Is Rider/Driver/Vaulteur a U.S. Citizen? Yes If no, what country? Spain

Is rider an Adult Amateur? Yes

Is rider under age 23? If so, please list date of birth: _____

Emergency Contact Phone No. (USEF requirement GR906.3.) 303 324 0100

"WARNING: Under Georgia Law, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in equine activities pursuant to Chapter 12 Title 4 of the Official Code of Georgia Annotated."



UNITED STATES EQUESTRIAN FEDERATION
THE NATIONAL GOVERNING BODY FOR EQUESTRIAN SPORT



UNITED STATES *Dressage* FEDERATION

(1 of 6 cards - DO NOT CUT)

HORSE VERIFICATION

USEF #: 5177974
Horse: TOMILLO VII
Membership: Life
Foal Date: 4/5/2000

(1 of 6 cards - DO NOT CUT)

HORSE VERIFICATION

USDF #: 1086806
Horse: TOMILLO VII
Membership: Life
Effective Date: 1/26/2011
Date Printed: 7/1/2012

(1 of 6 cards - DO NOT CUT)

RIDER VERIFICATION

USEF #: 5224792
Name: FRANCISCO JOSE GARCIA
Membership: 3 year Senior Professional
Effective Date: 2/22/2012
Exp. Date: 11/30/2014

(1 of 6 cards - DO NOT CUT)

RIDER VERIFICATION

USDF #: 188948
Rider: Francisco Jose Garcia
Membership: 5-year Participating
Effective Date: 3/1/2012
Exp. Date: 11/30/2016
Date Printed: 7/1/2012

(1 of 6 cards - DO NOT CUT)

OWNER VERIFICATION

USEF #: 5132182
Name: DORI DERR
Membership: Senior Amateur
Effective Date: 12/1/2011
Exp. Date: 11/30/2012
Other Owners:

(1 of 6 cards - DO NOT CUT)

OWNER VERIFICATION

USDF #: 179607
Owner: Dori Derr
Membership: 5-year Participating
Effective Date: 12/1/2010
Exp. Date: 11/30/2015
Date Printed: 7/1/2012

Competition Year: 2012
Date Printed: Sunday, July 01, 2012

Competition Year: 2012



UNITED STATES EQUESTRIAN FEDERATION
THE NATIONAL GOVERNING BODY FOR EQUESTRIAN SPORT

(1 of 5 cards - DO NOT CUT)

HORSE VERIFICATION

USEF #: 5177974

Horse: TOMILLO VII

Membership: Life

Foal Date: 4/5/2000

(1 of 5 cards - DO NOT CUT)

RIDER VERIFICATION

USEF #: 5224792

Name: FRANCISCO JOSE GARCIA

Membership: 3 year Senior Professional

Effective Date: 2/22/2012

Exp. Date: 11/30/2014

(1 of 5 cards - DO NOT CUT)

OWNER VERIFICATION

USEF #: 5132182

Name: DORI DERR

Membership: Senior Amateur

Effective Date: 12/1/2011

Exp. Date: 11/30/2012

Other Owners:

Competition Year: 2012

Date Printed: Wednesday, June 20, 2012

See reverse for more OMB information.

U.S. DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
EQUINE INFECTIOUS ANEMIA LABORATORY TEST
(VS Memorandum 555.16)

FORM APPROVED - OMB NUMBER 0579-0127

SERIAL NO.

R 0785585

1. ACCESSION NUMBER

12 NYPA
043086942. DATE BLOOD
DRAWN

1-12-12

Forms Without Adequate Descriptions Of The Horse and Complete Addresses Including Zip Codes, Counties, and Telephone Numbers Will Not Be Processed.

1. REASON FOR TESTING

☐ Market☐ Change of Ownership☒ Show☐ First Test☐ Retest☐ Export

4. GEOGRAPHIC INFORMATION

SYSTEMS (GIS)

LAT:

LONG:

5. VETERINARY LICENSE

OR ACCREDITATION NO.

4897

6. TEST TYPE

☐ ELISA☒ AGID

7. NAME AND ADDRESS OR STABLE/MARKET (Please print or type)

HIDDEN SPRING FARM

2126 Acker Road NW

MIXVILLE, GA

Zip Code 28112

Tel No.

707/284-9000

County LINCOLN

9. NAME AND ADDRESS OF VETERINARIAN (Please print or type)

ALEXIS P. SAGE, DVM

3607 COUNTRY PLACE

MIXVILLE, GA

Zip Code 28112

Tel No.

707/231-8993

County MCKENNA

8. NAME AND ADDRESS OF OWNER (Please print or type)

DORI P. DERR

2800 OLD 96 HWY

WEAVER, SC

Zip Code 29164

Tel No.

County YORK

I certify the specimen submitted with this Form was drawn by me from the horse described below on the date indicated above.

10. SIGNATURE OF FEDERALLY ACCREDITED VETERINARIAN

Alexis P. Sage, DVM

11. TYPE OR PRINT SIGNATURE NAME

ALEXIS P. SAGE, DVM

12. SIGNATURE DATE

1-12-12

I certify that I have examined this form and, to the best of my knowledge and belief, this form is true, correct and complete.

13. SIGNATURE OF OWNER OR OWNER'S AGENT

Barbara Ritz

14. TYPE OR PRINT SIGNATURE NAME

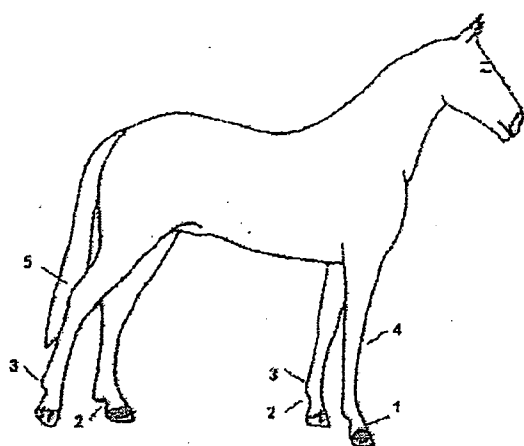
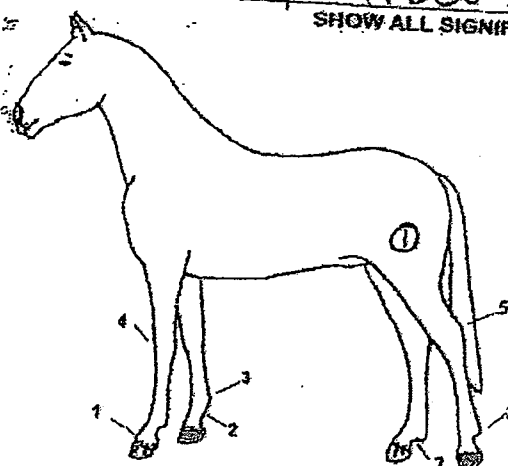
Barbara Ritz

15. SIGNATURE DATE

1-12-12

16. Tube No.	17. Official Tag No.	18. Tattoo Brand	19. Name of Horse	20. Color	21. Breed	22. Electronic I.D. No.	23. Age or DOB	24. Sex	25. M - Male F - Female G - Gelding N - Neuter
			TOMILLO VII	GREY/PRE			12Y.5		

SHOW ALL SIGNIFICANT MARKINGS, WHORLS, BRANDS, AND SCARS



1 - Coronet, 2 - Pastern, 3 - Fetlock, 4 - Knee, 5 - Hock

26. HEAD	NARRATIVE DESCRIPTION AND REMARKS
27. LEFT FORELIMB	
28. LEFT HINDLIMB	
29. RIGHT FORELIMB	
30. RIGHT HINDLIMB	31. OTHER MARKS AND BRANDS

32. DATE RECEIVED	33. DATE REPORTED OUT	34. TEST RESULTS
1-13-12	1-15-12	☒ Negative ☐ Positive
35. SIGNATURE OF TECHNICIAN	36. REMARKS	☒ AGID ☐ ELISA

Falsification of this form or knowingly using a falsified form is a criminal offense and may result in a fine of not more than \$10,000 or imprisonment for not more than 5 years or both (U.S.C. Section 1001).

VS FORM 10-11 (MAY 2003)

Phone 803-788-2260 FAX 803-736-0885

Sandy Donovan
Message Services
8183 GreenBell Dr
Memphis, TN 38125
April 23, 2013

Mr. Baron Stanton, PA
P.O. Box 245
Columbia, S.C. 29202

Dear Mr. Stanton,

Please find attached a copy of the entry form for the NPOCTA Summer Highland Fling, 2012 as requested.

This is a genuine copy from the original which is in my possession. The entries were submitted on line as indicated by the date in the top right hand corner of each page. Signatures were signed in the Show Office when the competitors arrived.

Kind regards —
Sandy Donovan

encl - 2 pages of entry form for Somello III.

Competition Name: NCDCTA Highland FLING
2012

Competition Dates: 06/23/2012 - 06/24/2012

Name of Horse	Previous Name (If Any)	For Sale?	Breed/Breed Initials	Sex
TOMILLO VII		NO	PRE	Stallion
Height	Color	Coggins Date (Enclosed Copy)	Sire	Dam
16.1	GREY	2012-01-15 00:00:00	Presumido XXXVI	Islena XVI
Dam's Sire	Country of Birth	Date of Birth	Breeder	Passport #
Panadero VIII	ESP	2000	Los Alburejos	190101002215577
Horse	Rider/Handler	Owner	Trainer	Coach
USEF # 5177974	USEF # 5224792	USEF # 5132182	USEF # 5224792	USEF #
USDF # 1086806	USDF # 188948	USDF # 179607	Please enclose copies of all membership cards and registrations.	
Local or FEI #	Local or FEI #	Local or FEI #		
Class No. 2	Division	Class Name	Qualifying Y/N	Fees
153	Open	Intermediaire II - Open, Q	Y	\$65
253	Open	Intermediaire II - Open, Q	Y	\$65

Owner: DERR, DORI

Address: 2820 Old 96 Indian Trail

City/State/Zip: Wagener SC 29164

Country: USA

Phone: 803-564-6919

Willing to Volunteer? 0

Email Address: donderr@gmail.com

Owner Citizenship (if not USA): USA

Rider/Handler: GARCIA, FRANCISCO

Address: 2820 Old 96 Indian Trail

City/State/Zip: Wagener SC 29164

Country: USA

Day Phone: 803-564-6919

Evening Phone: 803-564-6919

Email Address: jimderriaw@gmail.com

Rider Citizenship (if not USA): ESP

JR/Young Rider Birthday: 03/21/1970

Willing to Volunteer? 0

Rider Status: Professional

Trainer: GARCIA, FRANCISCO

Address: 2820 Old 96 Indian Trail

City/State/Zip: Wagener SC 29164

Country: USA

Phone: 803-564-6919

Willing to Volunteer? 0

Email Address: jimderriaw@gmail.com

Subtotal Class Fees	\$130
Office Fee	\$25
Package A: Handbook (\$100 for show)	\$100
USEF HORSETEES	
\$4 USEF FEE - ENROLLMENT	\$16
Total Fees	\$271

FEDERATION ENTRY FORM (E.F.)

By entering a Federation sanctioned competition and signing this entry blank as the Rider, Driver, Handler, Vaultor, Longeur and on behalf of myself and my previous representatives, employee, and agent, I agree that I am subject to the Rules and Rules of the United States Equestrian Federation Inc. (the "Federation") and the local rules of _____ (Competition). I agree to be bound by the Rules and Rules of the Federation and of the competition. I will accept as final the decision of the Hearing Committee on any question arising under the Rules, and agree to release and hold harmless the Federation, their officials, directors and employees for any action taken under the Rules. I represent that I am eligible to enter and/or participate under the Rules, and every horse I am entering is eligible as entered. I also agree that as a condition of and in consideration of acceptance of entry, the Federation and/or the Competition may use or assign photographs, videos, audios, cable casts, broadcasts, internet, film, new media or other likenesses of me and my horse taken during the course of the competition for the promotion, coverage or benefit of the competition, sport, or the Federation. These likenesses shall not be used to advertise a product and they may not be used in such a way as to jeopardize amateur status. I hereby expressly and irrevocably waive and release any rights in connection with such use, including any claim to compensation, invasion of privacy, right of publicity or to misappropriation. The construction and application of Federation rules are governed by the laws of the State of New York, to the extent prohibited against the Federation or of the State of New York State. See GR908.6.

Federation Release, Assumption of Risk, Waiver, and Acknowledgment

This document waives important legal rights. Read it carefully before signing.

I AGREE in consideration for my participation in this competition to the following:

I AGREE that the "Federation" and "Competition" are not responsible for the safety of the horse or rider. I agree to release and hold harmless the Federation, their officials, directors, employees, agents, personnel, volunteers and Federation affiliates.

I AGREE that I choose to participate voluntarily in the Competition with my horse, as a rider, driver, handler, vaultor, longeur, lessee, owner, agent, coach, handler, or as parent or guardian of a junior exhibitor. I am fully aware and acknowledge that horse sports and the Competition involve inherent dangerous risks of accident, loss, and various bodily injury including broken bones, head injuries, lacerations, pain, suffering, or death ("Harm").

I AGREE to hold harmless and release the Federation and the Competition from all claims for injury, damages or otherwise for any harm to me or my horse and for any harm of any nature caused by me or my horse to others, even if the harm is caused by negligence, including but not limited to the negligence of the Federation or the Competition.

I AGREE to expressly assume all risks of Harm to me or my horse, including Harm resulting from the negligence of the Federation or the Competition.

I AGREE to indemnify (that is, to pay any losses, damages, or costs incurred by the Federation or the Competition) and to hold them harmless with respect to claims for Harm to me or my horse, and for claims made by others for any Harm caused by me or my horse, and for the costs of the Federation, their officials, directors, employees, agents, personnel, volunteers and Federation affiliates, including GR901 and, if applicable, GR114, and I understand that I am required to wear protective equipment without penalty and I acknowledge that the Federation strongly encourages me to do so while WARNING that no protective equipment can guard against all injuries. If I am a parent or guardian of a junior exhibitor I consent to the child's participation and AGREE to all of the above provisions and AGREE to assume all of the obligations of this Release on the child's behalf. I represent that I have the requisite training, coaching and abilities to safely compete in this competition.

I AGREE that if I am injured at this competition, the medical personnel treating my injuries may provide information on my injury and treatment to the Federation on the official USPF accident/injury report form.

BY SIGNING BELOW, I AGREE to be bound by all applicable Federation rules and all terms and provisions of this entry blank and all other rules and regulations of the Federation and of the Competition. I agree to release and hold harmless the Federation, their officials, directors, employees, agents, personnel, volunteers and Federation affiliates, including GR901 and, if applicable, GR114, and I understand that I am required to wear protective equipment without penalty and I acknowledge that the Federation strongly encourages me to do so while WARNING that no protective equipment can guard against all injuries. If I am a parent or guardian of a junior exhibitor I consent to the child's participation and AGREE to all of the above provisions and AGREE to assume all of the obligations of this Release on the child's behalf. I represent that I have the requisite training, coaching and abilities to safely compete in this competition.

RIDER/DRIVER/HANDLER

COACH/AGENT

VAULTOR

LONGEUR

Vaultor/Longeur/Handler/Agent

(Mandatory)

Emergency

Medical

Signature:

Signature:

Signature:

Signature:

Print Name: FRANCISCO GARCIA

Print Name: HORTON

Print Name: FRANCISCO GARCIA

Print Name:

Parent/Guardian Signature: (Required if Rider/Driver/Handler/Vaultor/Longeur is a minor)

Print Parent/Guardian Name:

Emergency Contact Person Name:

Is Rider/Driver/Vaultor a U.S. Citizen? Yes ☒ No ☐

Page 81

1 Q: Well, the St. John's Island clinic where he
2 went up for a couple of days at the behest of
3 the people --
4 A: Uh-huh (affirmative response).
5 Q: -- who wanted that done --
6 A: Uh-huh (affirmative response).
7 Q: -- Half Moon Stables had no financial interest
8 in that?
9 A: No.
10 Q: Was it your understanding that he went up and
11 did that clinic for two days in North Carolina
12 for free, or do you have any knowledge at all
13 about how in terms --
14 A: Oh, I don't think it was free. I've never
15 heard of anybody working for free. Maybe they
16 do, but not that one. I mean, it wasn't like
17 a demonstration or anything like that. It was
18 a proper clinic. I don't know what they
19 charged for it; I didn't go.
20 Q: Do you have any understanding of what he
21 received for doing it?
22 A: No.
23 Q: So prior to his coming to work for Half Moon
24 Stables, LLC, on or around August the 1st,
25 2012, Mr. Garcia only rode Tomillo one time?

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1 A: To my knowledge. I was not there. I left for
2 two weeks. Right? I went to the -- remember
3 I told you I said I went to St. Thomas.
4 Q: Right.
5 A: Okay. So as far as I know, not having been
6 there I don't know, but I don't think so.
7 Q: Now --
8 A: I think I would have heard about it.
9 Q: Now -- yeah, I was going to say, I'm a little
10 confused. Do you think it's possible that in
11 your absence he could have gone to your stables
12 and ridden your thoroughbred horse in your
13 absence?
14 A: He is a PRE, and I don't think so. I don't
15 think -- you know, I don't think so. I think
16 I would have heard about it. If he had I
17 wouldn't have been upset. The man's one of the
18 top riders in the world and I would have
19 accrued to my benefit if he had, but not that
20 I've heard of.
21 Q: But you have no direct knowledge of his having
22 ridden your PRE horse Tomillo more than one
23 time before you hired him August 1st, 2012?
24 A: Yes, I have no direct knowledge that he did or
25 didn't, other than that one time. I wouldn't

Page 83

1 have minded if he had.
2 Q: I think you corrected me when I mentioned that
3 your horse was a thoroughbred.
4 A: Yeah. It's not.
5 Q: Do you distinguish between a PRE and a
6 thoroughbred?
7 A: (Nods head affirmatively.)
8 Q: Wait.
9 A: Pura Raza Espanola.
10 Q: Respond verbally. Head nods won't show up on
11 the --
12 A: It's just -- surprised you didn't know that.
13 Q: Let me clarify something to you. We're
14 speaking for the record.
15 A: Yeah.
16 Q: For other people to understand as well. Okay?
17 So if I ask you a question, sometimes it's just
18 a question to clarify for the purpose of other
19 people reading the record what we're talking
20 about.
21 A: Okay. Well, we have been talking about Spanish
22 horses and he is a Spanish horse. He has
23 known as a Pura Raza Espanola. The only horses
24 that have that designation are horses which
25 have been bred by the Spanish and are included,

Page 84

1 inscribed, revised and qualified in the Spanish
2 stud book. They're by and large imported into
3 this country from Spain, your client being one
4 of the largest importers and, as far as I know,
5 only has that kind of horse. They're rare,
6 they're exotic and they're not thoroughbreds.
7 Q: How would you define a thoroughbred?
8 A: Thoroughbred is a breed of horse like our
9 racehorses are. They are bred according to a
10 completely different set of circumstances. The
11 Pura Raza horses, the Spanish horses, are the
12 old war horses from back in Napoleon's day in
13 Spain. They were -- they're bred like a
14 national treasure. They were the Spanish
15 military horse. Leave me some blanks and I'll
16 give you a better description of what it is.
17 Q: I'm just trying to understand what you define
18 as a thoroughbred. You're saying a
19 thoroughbred is a distinct breed?
20 A: Yes, it is. Yeah, very much so. Irish
21 thoroughbreds, our racehorses are
22 thoroughbreds. The -- like an Arabian is a
23 breed; a Pinto is a breed; a quarterhorse is a
24 breed; all those horses are breeds. A
25 thoroughbred is a breed. A Pura Raza Espanola

21 (Pages 81 to 84)

Page 105

Page 107

1 interrogatories. Are you familiar with what I
 2 mean by an interrogatory?
 3 A: (Nods head affirmatively.)
 4 Q: In this case we sent you essentially written
 5 questions, which required you to respond
 6 through your lawyer with written answers. And
 7 I'm referring to your answers dated around
 8 December 14th, 2012 in this lawsuit, and there
 9 was a question asked, question number four,
 10 what was Francisco Jose Garcia Ibanez's
 11 employment status, parentheses, e.g., salaried
 12 employee, hourly employee, independent
 13 contractor/consultant, et cetera, closed
 14 parentheses, with Half Moon, LLC as of July the
 15 19th, 2012, the date of the first complaint
 16 against you in this action.
 17 And the response was given -- I can hand
 18 it to you -- I'll just read it first -- for
 19 number four was, on July the 19th, 2012 Mr.
 20 Garcia was a salaried at-will employee pursuant
 21 to an oral contract of employment with Half
 22 Moon, that was subsequently reduced to writing
 23 and executed in English and Spanish
 24 counterparts in August of 2012.
 25 I'll hand you that document and there's

1 Q: With your memory having been refreshed, can you
 2 now tell me when you first hired him to work at
 3 Half Moon Stables, and when you first paid him
 4 anything to work at Half Moon Stables?
 5 A: I don't remember the exact date, other than the
 6 fact that I know I paid him for that one
 7 lesson. I don't remember the exact date.
 8 There was -- until the visa was in effect. I
 9 know that was a big -- if we didn't have a
 10 visa, then we wouldn't have an employment, so
 11 I think that was the primary criteria. I don't
 12 remember all the exact dates as to when all
 13 that came through, but certainly once he was --
 14 had a visa and could be employed by us legally,
 15 I would imagine that would be the day that he
 16 would have been paid.
 17 Q: Well, now, you earlier testified that he wasn't
 18 hired or paid before August 1st, 2012.
 19 A: Right. Well, I was referring to that, what we
 20 just said. The written contract was executed
 21 that date. And that --
 22 Q: But you understand the earlier question wasn't
 23 when was the written contract executed. The
 24 question was when did you first hire him and
 25 pay him anything.

Page 106

Page 108

1 number four if you want to look at it. Is that
 2 an accurate answer to that question?
 3 A: Assume so.
 4 Q: So were you in error earlier in this deposition
 5 when I asked when was the first time you ever
 6 paid him anything and when did his employment
 7 with you start, and I believe you affirmed that
 8 it didn't start before August the 1st, 2012.
 9 A: I think what I said was the date of the
 10 contract.
 11 Q: Which is August the 1st, 2012; correct?
 12 A: Right. The written contract. The oral
 13 contract was prior to that.
 14 Q: Right. And what was unclear about when was
 15 the first time that he came to work for you for
 16 money? Is there something unclear about that?
 17 A: No, I think I was just confused by the fact
 18 that one was a written and one was an oral
 19 contract. I was thinking that we would --
 20 started paying him when we had the written, but
 21 you're right. We did do the written. It was
 22 reduced later, and he was -- it was -- the oral
 23 contract was done, so I will amend my answer
 24 based on this refreshing my recollection on the
 25 two -- two forms of contract.

1 A: No, the earlier question was when was the
 2 contract, not written.
 3 Q: Well, the record will reflect what it was.
 4 A: Okay.
 5 Q: But let's just move on and explore when did you
 6 first hire him regardless of whether there was
 7 a written contract, an oral contract or any
 8 contract at all? When did you first hire him
 9 and pay him, if you remember?
 10 A: What I -- I don't remember exactly. I remember
 11 that it had to do with the visa finalization.
 12 In other words, that was the only determining
 13 factor. Whether we would hire him or not hire
 14 him had to do with whether or not we could get
 15 the visa.
 16 Q: So are you now testifying that you would not
 17 have hired him or paid him anything before the
 18 visa was approved?
 19 A: We couldn't have.
 20 Q: I don't want to know whether you could have.
 21 I want to know whether you did or did not, if
 22 you remember.
 23 A: Other than that lesson, no. To my
 24 recollection, no. And the confusion was over
 25 the written contract and the oral contract in

27 (Pages 105 to 108)



Francisco Garcia (188948)

USDF Current Competition Year Score Check

Date Range: 10/1/2012 to 9/30/2013

Date	Competition	Class	Level	Test	Horse	Judge(s)	Special Designation	Score	Placing
12/1/12-12/2/12	Holiday on Horse	FEI Intermediate II	Intermediate II	Regular	TOMILLO VII	J. Hannon	GAIG Qualifying	63.158	1
12/1/12-12/2/12	Holiday on Horse	FEI Intermediate II	Intermediate I	Regular	TOMILLO VII	J. Hannon	GAIG Qualifying	64.079	1
11/10/12-11/11/12	Low Country Fall Dressage Classic	FEI TOC (I1 - GP) (Q, Q, BLM)	Intermediate II	Regular	TOMILLO VII	F. Kehr	GAIG Qualifying	63.616	2
11/10/12-11/11/12	Low Country Fall Dressage Classic	FEI TOC (I1 - GP) (Q, Q, BLM)	Intermediate II	Regular	TOMILLO VII	F. Kehr	GAIG Qualifying	63.158	2
11/1/12-11/4/12	Great American Insurance Group/USDF Region 1 Dressage Championships and NCDCTA Harvest Moon Dressage recognized by the United States Equestrian Federation	Region 1 Finals Intermediate II Open	Intermediate II	Regular	TOMILLO VII	S. Gelke, U. Schmitz		59.276	4
11/1/12-11/4/12	Great American Insurance Group/USDF Region 1 Dressage Championships and NCDCTA Harvest Moon Dressage recognized by the United States Equestrian Federation	FEI Intermediate II	Intermediate II	Regular	TOMILLO VII	E. Stine-Masek	GAIG Qualifying	66.316	2
11/1/12-11/4/12	Great American Insurance Group/USDF Region 1 Dressage Championships and NCDCTA Harvest Moon Dressage recognized by the United States Equestrian Federation	\$300 Sotheby's Stakes Large Tour FEI I-2, Grand Prix TOC	Intermediate II	Regular	TOMILLO VII	G. Hoff-Carmona	GAIG Qualifying	58.579	2
11/1/12-11/4/12	Great American Insurance Group/USDF Region 1 Dressage Championships and NCDCTA Harvest Moon Dressage recognized by the United States Equestrian Federation	FEI Intermediate II	Intermediate II	Regular	TOMILLO VII	M. Freeman	GAIG Qualifying	62.895	2
10/8/12-10/7/12	Border Line Dressage	Intermediate II	Intermediate II	Regular	TOMILLO VII	M. Schneider	GAIG Qualifying	68.684	1

4051 Iron Works Parkway, Lexington, KY 40511 | Phone: (859) 971-2277 | Fax: (859) 971-7722 | [Site Issues? Contact Us](#)
 USDF 501(c)(3) Non-Profit Organization - [Privacy Policy](#) | [Terms & Conditions](#)

898	Barbara Gray	Charlemagne	FEI Prix St. Georges 2009	Adult Amateur	224.5	59.079%	3
896	Tami Crawford	Roncalli	FEI Prix St. Georges 2009	Open	256.5	67.500%	1
897	Stacie Briton Myers	Fliegender	FEI Prix St. Georges 2009	Open	251.5	66.184%	2
893	Diane Ritz	Savannah	FEI Prix St. Georges 2009	Open	247	65.000%	3
327	Jami Edwards	Freewill	FEI Prix St. Georges 2009	Open	239.5	63.026%	4

Intermediare I - Open Q

(C) Canace "S" NJ,							
888	Rhonda Dretel	Titus	FEI Intermediate I 2009	Adult Amateur	246	64.737%	1
243	Theresa Horne	Agathon	FEI Intermediate I 2009	Adult Amateur	237.5	62.500%	2
228	Kristen Kovach	First Dance	FEI Intermediate I 2009	JR/YR	238	62.632%	1
891	Carolyn West	Darkwin	FEI Intermediate I 2009	Open	257.5	67.763%	1
388	Ryan Eskridge	Franziskana	FEI Intermediate I 2009	Open	244.5	64.342%	2
887	Stacey Hastings	Livingston	FEI Intermediate I 2009	Open	242.5	63.816%	3

Intermediaire II - Open, Q

(C) Canace "S" NJ,							
894	Francisco Garcia	Tomillo VII	FEI Intermediate II 2009	Open	212	55.789%	1

FEI Grand Prix - Q

(C) Canace "S" NJ,							
892	Jodi Lees	Weltmarkt	FEI Grand Prix 2009	Open	304.5	64.787%	1

FEI Young Rider Individual (NAJYRC/USEF Qual)

(E) Osinski "S" WA, (C) Canace "S" NJ,							
229	Hannah Holland Shook	Pharoh	FEI Young Riders Individual 2009		514.5	67.697%	1

FEI Young Rider Freestyle (NAJYRC/USEF Qual)

(E) Osinski "S" WA, (C) Canace "S" NJ,							
229	Hannah Holland Shook	Pharoh	FEI Young Riders Freestyle 2009		534.5	66.813%	1

USEF/FEI TOC- (Markel/USEF Qualifying)

(C) Osinski - Canace,							
304	Debbie Hill	Boccaccio IOF	FEI YH Final for 5-Year-Olds	Open	39.300	78.600%	1
288	Kathryn Stoy	Rosser MWF	USEF YH Test for 4-Year-Olds 2007	Open	38.4	76.800%	2
250	Dawn Jensen	Legacy Gold ESE	FEI YH Final for 5-Year-Olds	Open	37.400	74.800%	3
301	Debbie Hill	Sir Sherlock	FEI YH Final for 5-Year-Olds	Open	37	74.000%	4
294	Stacie Briton Myers	Finneus	USEF YH Test for 4-Year-Olds 2007	Open	37	74.000%	4
340	Sandie Gaines-beddard	Flairance	FEI YH Final for 5-Year-Olds	Open	36.200	72.400%	6
298	Debbie Hill	Showdown	FEI YH Final for 6-Year-Olds	Open	33.8	67.600%	

USEF Developing Horse 7-9, 2012 PSG (USEF Qual)

(E) Osinski "S" WA, (C) Canace "S" NJ,							
899	Debbie Hill	River Side Lady	USEF Developing Horse 2009	Open	478.5	70.368%	1
238	Katie Poag	Freewind	USEF Developing Horse 2009	Open	466	68.529%	2
895	Ashley Wimmer	Somerhall	USEF Developing Horse 2009	Open	461	67.794%	3

Coves Darden's brief in opposition to Defendants' renewed motion for summary judgment, dated
May 14, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

Coves Darden, LLC,)

Plaintiff,)

v.)

Francisco Jose Garcia Ibañez,)

Dori Derr,)

and Half Moon Stables, LLC,)

Defendants.)

Brief of Plaintiff in Opposition to Defendants' Renewed Motion for Summary Judgment

Plaintiff submits this memorandum in opposition to Defendants' renewed motion for summary judgment.¹

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- II. The Illusory "Sole" Premise of Defendants' Motion and Summary of Plaintiff's Opposition.
 - A. Defendants Now Limit Their Entire Motion to the Question of Whether a Contractual Relationship Existed Between Ibañez and Coves Darden.
 - B. The "Sole Issue Presented" Requires Correct Application of Pertinent Principles of Contract Law.

¹Notice of a motion, with no grounds, was filed by Defendants on December 5, 2012. It was later withdrawn. Notice of motion, with no grounds, was filed by Defendants on January 28, 2013. The actual grounds for their motion, discovery materials, and an affidavit of Ibañez dated December 10, 2012 were filed by Defendants on February 28, 2013, less than 10 days before the time set for hearing. Plaintiff filed a brief and other materials in opposition. Upon hearing, the motion for summary judgment was deferred, and Defendants were given leave to reset it.

- C. Defendants Do Really Limit Their Argument to the One Issue of Contract Existence.
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- I. Inducing Termination of a Highly Responsible Employee by Secretly Accepting the Services of the Employee in Directly Competing Activities, Encouraging the Employee's Violation of an Agreement for Exclusivity, and Facilitating a Violation of U.S. Immigration Laws are Improper Means of Inducing Termination.
- J. Tortiously Interfering with a Contract by Violating Laws Designed to Protect U.S. Workers is Unfair Competition and an Unfair or Deceptive Act or Practice in the Conduct of Trade or Commerce; Coupling the Interference With Advertisements Having a Tendency to Mislead is an Additional and Related Violation of the SCUTPA.

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I. Nature of the Case.

This case arises from an extraordinary employment relationship. Plaintiff made a significant investment in South Carolina including stables, a residence, substantial acreage, and 85-90 pure-bred rare horses, to be operated as a business. (Coves aff.) The principals of Plaintiff, Miguel Coves and Dorothea Darden, made the premises their home, where they live with their two daughters. (See Coves aff.) The business was intended to establish national prominence in breeding and training Spanish Horses, and a major association in the U.S. with a Spanish dressage institution. (Id.) Plaintiff entered into an employment contract with Ibañez, a Spanish national of international prominence associated with the Royal Andalusian Equestrian School in Spain. (Coves aff.)

Plaintiff and Ibañez spent over a year establishing and arranging the employment relationship. (Id.) Between December, 2010 and December, 2011, Plaintiff both traveled to Spain and underwrote the majority of the expenses for no less than four visits of Ibañez from Spain to Aiken, South Carolina, often accompanied by family members. (Id.) Ibañez obtained a two-year leave of absence from his employment at the School, based on a mutually expected two-year-or-more employment commitment. (Id.) Ibañez' pre-employment visits involved Ibañez being hosted in Aiken by Plaintiff for over 150 days. (See Ibanez depo. at 27, 28, 37, 58, 69, and 70 (visits in December, 2010, January, 2011, April-June, 2011, and September-December, 2011) and see Coves aff.) Additionally, Plaintiff arranged for Ibañez to be paid in Spain during part of this one-year period. (Coves aff.) Plaintiff finally procured an extraordinary visa for Ibañez based upon a mutually expected two-year exclusive employment commitment. (Id.)

Four months after getting his work visa and arriving in the U.S. for the job, Ibañez lied to his employer about preparedness for longstanding plans, abandoned his employment, and was promptly discovered conducting classes at the premises of Defendant Half Moon and enrolled to ride horses for Half Moon in shortly upcoming competitions. (*Id.*) Half Moon advertised Ibañez as being “on an extended sabbatical in the U.S. based at Half Moon Stables.” (*Id.*)

Plaintiff sued Ibañez for breach of contract accompanied by fraudulent act and breach of fiduciary duty, and sued Half Moon, and its principal, Dori Derr, for tortious interference with contract and prospective advantage, and violation of the South Carolina Unfair Trade Practices Act. (Complaint.)

II. The Illusory “Sole” Premise of Defendants’ Motion and Summary of Plaintiff’s Opposition.

A. Defendants Now Limit Their Entire Motion to the Question of Whether a Contractual Relationship Existed Between Ibañez and Coves Darden.

Defendants now seek a dismissal of the entire suit, on the sole basis of their mere assertion that there was no contractual relationship between Plaintiff and Defendant Ibañez.

In a more recently filed motion to stay discovery, Defendants have reiterated that this unlikely ground is the sole premise of their summary judgment motion. In the motion to stay discovery, Defendants contend that there are no other relevant issues in the case that Plaintiff should be allowed to prepare for, and that Plaintiff should be stopped from investigating.²

²This contention ignores the law of contracts, fiduciary duty, and unfair competition. For this contention to be viable, Defendants have to contend that if there was no contractual relationship between Plaintiff and Ibanez, there was nothing any Defendant could have done which was wrongful or in breach of any duty or agreement. The fallacies of these and other

Because, as demonstrated herein, the relationship between Plaintiff and Ibanez was patently contractual, Defendants' entire motion should be denied. (See, e.g., Coves aff. (Plaintiff and Ibanez entered into a highly trusting employment agreement on specified terms of compensation, duration, exclusivity, etc.).)

B. The "Sole Issue Presented" Requires Correct Application of Pertinent Principles of Contract Law.

In a series of steps, Defendants confuse at-will employment with the absence of a contract. They first assert there was no written contract because Ibanez allegedly has not signed one.³ They then skip any discussion of the evidence of an oral contract, and do not present any affidavit concerning it. They then perfunctorily characterize the relationship as "at-will employment." This then brings them to characterize at-will employment as the absence of a contract. There was a contract.

Both Plaintiff and Ibanez state that they specifically contemplated and agreed for the employment to be for a minimum duration of two years barring a visa problem or other extraordinary circumstance. (See Coves aff. and see, e.g., Ibanez depo. at pp. 38-41). Yet,

arguments will be addressed later in this brief, but since all of Defendants' arguments now must fail with the failure of their "not contractual" argument, and they very clearly limit their motion to that one issue, Plaintiff will address it first.

³Compare Liberatore aff. (Liberatore went over the terms of the contract with Ibanez on the telephone to prepare Ibanez for his visa interview, as the visa file reviewed by the interviewing consular officer would have the contract in it). Plaintiff has forthrightly stated that Plaintiff has not been able to locate a copy countersigned by Ibanez, but Plaintiff has not stated that Ibanez did not sign a copy. The Court might be interested that as of December 10, 2012, Ibanez had not stated this either. (Compare Ibanez aff.)

Defendants still simply assert that the employment contract was one for employment at will.

Defendants then appear to confuse at-will employment with the absence of a contract at all.

A contract does not have to be in writing to be a contract.

General contract law provides that a contract exists when there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act.

Prescott v. Farmer's Telephone Co-Op, Inc., 335 S.C. 330, 516 S.E.2d 923 (1999). A contract may arise from oral or written words or by conduct. Id. In the employment context, a contract altering the at-will arrangement may arise, in part, from the oral statement of the employer. Id. The at-will status of an employee may be altered by an oral contract of definite employment. Id.

An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it. Id. The offer identifies the bargained for exchange and creates a power of acceptance in the offeree. Id. Any conduct from which a reasonable person in the offeree's position would be justified in inferring a promise in return for a requested act amounts to an offer. Id. To be binding, an offer must be definite. In addition, it must be one which is intended of itself to create legal relations on acceptance. Id.

The required elements of a contract are an offer, acceptance, and valuable consideration. Armstrong v. Collins, 366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005). A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct. Id. Valuable consideration may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or

undertaken by the other. Id. A benefit to the promisor or a detriment to the promisee may provide sufficient consideration for a contract. Id.

If the evidence as to the existence of a contract is conflicting or raises more than one reasonable inference, the issue should be submitted to the jury. Id. “[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

With certain exceptions, a contract need not be in writing to be enforceable. Armstrong. If there is a meeting of the minds with regard to the essential elements of a contract, it is immaterial whether the contract is written or oral. Id.

A written contract does not have to be signed to be a contract.⁴ The absence of the signature of one party to a written agreement does not necessarily negate the fact that there is a written contract. Peddler, Inc. v. Rikard, 266 S.C. 28, 221 S.E.2d 115 (1975); Gladden v. Keistler, 141 S.C. 524, 140 S.E. 161, (1927); Jaffe v. Gibbons, 290 S.C. 468, 351 S.E.2d 343, (Ct. App. 1986).

Employment at will is a contract. An at-will employment contract is still a contract; it is simply a contract in which one party agrees to work, in return for which the other party agrees to pay, and in which one of the terms is that the period of employment is terminable at will. Jones v. General Elec. Co., 331 S.C. 351, 503 S.E.2d 173 (Ct. App. 1998). The agreement is still

⁴In their February 28, 2013 Memorandum at 7, Defendants declare that “the unsigned written contract is simply unenforceable” and that “the unsigned contract is clearly unenforceable.” They cite no authority.

contractual. Hudson v. Zenith Engraving Co., 273 S.C. 766, 259 S.E.2d 812 (1979). In South Carolina, an “at-will” employment relationship is not the absence of a contract; it is the presence of a contract, one term of which is that the contract may be terminated at will. Prescott v. Farmer’s Telephone Co-Op, Inc., 335 S.C. 330, 516 S.E.2d 923 (1999). The relationship is contractual.⁵ Id.

C. Defendants Do Really Limit Their Argument to the One issue of Contract Existence.

With a correct understanding of the law, some may question whether the Defendants’ have truly limited the entire basis of Defendants’ motion for summary judgment to the assertion that there is no evidence of an oral or written contract for employment between Coves Darden and Ibañez. However, this is what they have stated. (See , e.g., Def. Mem. at 1 (“unusual case in which Plaintiff denies oral contract and asserts unsigned written contract”), at 2 (“denies oral contract and admits no executed written contract exists”), at 3 (“no contract with which to

⁵Where a written or verbal contract exists, the relationship is, by definition, contractual. In their February 28, 2013 Memorandum at 5-7, Defendants incorrectly imply that an at-will employment relationship is the absence of an employment contract. However, when such shorthand expressions are used in caselaw, the reference is usually to the absence of a written contract in which one of the terms is a fixed period of employment or a right to only be discharged for cause. In this sense, a terminated employee is said to have no cause of action for breach of contract for being let go. This is not to say that neither party has a cause of action for any other breach of the contract. It is therefore a misleading generalization to say that “ordinarily, there is no cause of action for breach of an at-will employment contract.”

Even Half Moon, in its own response to interrogatories, admits that employment at will is contractual. In response to Plaintiff’s interrogatory asking Ibañez’ employment status with Half Moon on July 19, 2012, and the terms in effect at that time, Half Moon responded as follows: “On July 19, 2012, Mr. Garcia was a salaried at-will employee pursuant to an oral **contract** of employment with Half Moon that was subsequently reduced to writing and executed in English and Spanish counterparts in August, 2012.” (Emphasis added.)

interfere”), at 5 (“there is no employment contract”), and at 6 (“no written or oral contract of employment”).

Defendants recently abandoned any other basis for their motion. They filed a motion for stay of discovery, contending that contract-or-no-contract was the sole issue.⁶ They thus expressly abandon their summary judgment arguments of: lack of fiduciary relationship, no breach of fiduciary duty, lack of impropriety in interfering with the employment, and absence of violation of the South Carolina Unfair Trade Practices Act. These were all extensively briefed by Defendants. More than a word about the motion to stay discovery is warranted.

Originally, Defendants’ argument on fiduciary duty did not seem to rely primarily on the assertion of a lack of contract. Rather, that argument relied on characterizing Ibanez as a “non-managerial non-fiduciary employee.” The argument on tortious interference with contract seemed to rely on the assertion that the relationship between Plaintiff and Ibanez was at-will, and that it was impossible to tortiously interfere with such a relationship even if done secretly and through improper means. The SCUTPA argument seemed to be that the public impact of Derr’s

⁶The Court will note that the Defendants have already acted upon the motion to stay discovery as if it were an order upon having written it: Defendants already refuse, and provide no cooperation in, discovery without the motion being heard or granted. Plaintiff’s earlier motion to compel already addressed the failure of Defendants to present a party-opponent for deposition without having even filed such a motion. Defendants have been requested to supplement interrogatory responses regarding the identities and contact information for witnesses who may have information bearing on the credibility of D.Derr and Ibanez and matters listed in Half Moon’s incomplete responses to interrogatories. However, they have not done so. Defendants complained that a recent deposition notice was sent without procuring a date from them first. However, despite a written request that they provide alternate dates if scheduling was an issue, they refuse to do so.

and Half Moon's activities were a relevant issue and additionally, that Defendants Derr and Half Moon contended that their advertisements were "true."

It might appear that if Defendants won their argument on there being no contractual relationship, other parts of the case would still go forward and need discovery in order for summary judgment to be determined. And unless the other arguments were won by Defendants as well, there would need to be discovery on those parts of the case to prepare for trial.

But in their motion to stay discovery, Defendants argue that the entire progress of the entire case should be put on hold for their summary judgment motion. They cite no South Carolina law. They ignore the veritable injunction of South Carolina law which requires a denial of summary judgment unless there is first adequate time and opportunity for discovery.⁷

Defendants contend that the "sole issue presently before the Court" is the contractual or other relationship between Ibañez and Coves Darden. (Def. Mot. To Stay Discovery at 4 (emphasis added).)⁸ In their Motion to Stay Discovery at 5-6, Defendants imply that whether there was a contractual relationship is a "potentially meritorious and complete legal defense." (Emphasis added.)

⁷Some of this caselaw is discussed later in this brief.

⁸ The Defendants simultaneously and almost backtrackingly express this "sole" issue broadly as "the nature of the relationship between the parties and the legal consequences of that relationship." (Def. Motion to Stay Discovery at 4 (emphasis added).) While this broad definition of an "issue" might appear to be a reservation of the ability to argue numerous other theories for summary judgment, it would be extremely unfair, and inconsistent with Defendants' position that there is only one issue and that Plaintiff does not need, and should not be allowed, discovery on any other issues.

The only fair application of Defendants' statements is that they argue only the one issue.

Similarly, at page 6, they argue that inquiry into the activities of Derr and Half Moon in interfering with the employment contract, making plans to transfer Ibañez' visa while he was still on the Coves Darden payroll, and matters bearing on the credibility of Ibañez and Derr in their depositions and interrogatory responses "exceed the scope of matters at issue in the Motion [for Summary Judgment]" filed by all three Defendants, which originally appeared to be addressed to every claim in the case.

D. Defendants Never Even State That There is No Evidence of an Employment Contract.

The assertion by Defendants that there is a lack of a contractual employment relationship is based solely on a strained and narrow presentation of early interrogatory answers or responses to requests for production by Plaintiff.

There, Plaintiff forthrightly attempts to clarify that the parties did write up some of the common terms of their contract to support the application made to immigration authorities, and that it was, thus, not just an "oral" contract. Plaintiff did not deny that the parties had orally agreed on the terms of employment. (See Transcript of March 5, 2013 proceedings, p. 8, L9 to p. 9, L10 ("if there is no written contract, there is a verbal contract where the parties fully understood the basis on which this man was going to work for them and even if one determined that the contract was an at-will relationship, the black letter law of South Carolina is that employment at-will is ... contractual").)

Defendants do not even present an affidavit of Ibañez disputing that he agreed on terms of employment with Coves Darden.

They do not present an affidavit denying he entered into a contract in which the parties had a clear understanding that the expected duration was two years or more, provided it was supported with a work-permitted visa.

The conspicuous absence of any testimonial materials by Ibañez to support the three Defendants' assertion is explained by his deposition testimony, recently obtained.

E. A Contractual Relationship Did Exist Between Ibañez and Coves Darden.

In his deposition, Ibanez acknowledges that a contract was entered, and renders the Defendants' whole summary judgment motion a nullity.

After all this waiting and jockeying and arguing, there is not even an issue over whether the parties entered a contract; they did. There is, at best, a factual dispute over some of the terms the parties included. And summary judgment should be denied.

Some of the passages in which Ibañez confirms that the parties entered a contract are as follows.

5 Q: During that visit in December of 2010 for the
6 four or five days that you stayed at the Coves
7 Darden residence, did you have any discussions
8 about the prospect of employment with Coves
9 Darden?

10 A: Yes.

11 Q: What were those discussions?

12 A: Well, they offered me employment here.

13 Q: Were you interested?

14 A: If we were to reach an agreement.

(Ibañez Depo., p. 29 (emphasis added).)

4 Q: On that December 2010 visit to the Coves Darden
5 Farm, did you **accept the offer** of employment?

6 A: No.

7 Q: Did you **reject the offer**?

8 A: No.

9 Q: What understanding did you have when you left?
10 A: Well, we left it -- the thing is, I needed more
11 time. I asked for more time to speak with my
12 family about it. I requested to be able to
13 come back with my wife so she could see the
14 area and know where we'd be living and just
15 **have time to think about it.**
16 Q: So you were interested?
17 A: Of course.

(Id., p. 32 (emphasis added).)

Q: We were just discussing a visit you made to
10 South Carolina in December of 2010. When was
11 the next time that you met with or talked with
12 Mr. Coves or Ms. Darden?
13 A: Possibly January, late January, early February,
14 but no later than that.
15 Q: January or February of 2011 approximately?
16 A: Yes. If you want, I can look if I have the
17 dates.
18 Q: That would be fine.
19 A: January.
20 Q: And what happened in January? Was there a
21 telephone call or a visit?
22 A: No. I went to visit with my wife.
23 Q: And you had some communication with Mr. Coves
24 or Ms. Darden?
25 A: Of course. We came with my wife to **talk more**
1 **about the proposal.**
2 Q: Oh, I understand. You went with your wife to
3 visit with Mr. Coves and Ms. Darden?
4 A: Yes.
5 Q: At their farm in South Carolina?
6 A: Yes.
7 Q: Did you bring anyone else with you?
8 A: No.
9 Q: Who paid the cost of your travel?
10 A: Mr. Coves.
11 Q: Did you stay in South Carolina for a while?
12 A: Four or five days.
13 Q: Did you stay at the Coves Darden Farm?
14 A: I think I remember it was a house they own
15 outside of the farm.
16 Q: And what was the purpose of the visit?
17 A: Like I said before, **to decide the proposal.**

18 Q: Did your wife like what she saw?

19 A: Yes.

(Id., pp. 36-37 (emphasis added).)

10. Q: How did the discussions progress regarding the

11 prospect of employment?

12 A: I don't understand.

13 Q: Did you continue to entertain the possibility

14 of working for them?

15 A: Yes.

16 Q: Did you discuss any differences between the two

17 of you over the terms that would be acceptable?

18 A: No. We continue with the same agreement.

19 Q: Did you accept their proposed terms on that

20 visit?

21 A: Yes.

22 Q: So at this time, you reached an agreement in

23 which you would work for an expected length of

24 two years, which might possibly be extended?

25 A: Yes.

(Id., p. 38 (emphasis added).)

7 Q: And the terms were also to include applying for
8 a visa for you to come?

9 A: Yes.

10 Q: Under the terms that you agreed to, who was to

11 bear the expense of making the visa

12 application?

13 A: Well, the visa has to be requested by the

14 person here who's going to sponsor and pay the

15 government, so that would be done by them.

16 Q: All right. Including the legal expenses?

17 A: Of course.

18 Q: And the terms of employment also were that your

19 travel expenses from Spain to the United States

20 for you and your family including the airline

21 travel would be paid by Coves Darden?

22 A: Yes. We didn't have a contract until after we

23 had a visa, but that was the agreement.

(Id., pp. 38-40 (emphasis added).)

25 Q: Now, having visited Coves Darden Farm in

1 December of 2010 and having returned for a

2 visit in January of 2011, did you get a chance
3 to look at their horses before accepting the
4 employment?
5 A: Of course. Yeah, in fact that's why he offered
6 me the job because he saw me mounting his
7 horses.

(Id., pp. 47-48.)

18 Q: Thank you. Now, on the subject of what you
19 were expected to do for Coves Darden in
20 training horses and taking them to competitions
21 and perhaps also giving clinics, what hours
22 were expected of you?
23 A: Yes. When we were talking about the terms of
24 the contract or the agreement in December 2010,
25 of course one of my questions was what type of
1 schedule I would have, and he answered that I
2 was a professional, and he had total confidence
3 in me, and I would run things in my way.
4 Q: Then did you have any discussion about the
5 quantity of work or the approximate number of
6 hours in the day or week that you would work?
7 A: No real questions about that. We basically
8 were just understood that the schedule would be
9 based on the workers that were already working
10 in the stable.

(Id., pp. 48-49 (emphasis added).)

4 Q: Mr. Garcia, the agreement you reached to become
5 employed by Coves Darden was in January of
6 2011, correct?
7 A: Correct.
8 Q: And the visa was approved some time around
9 January of 2012?
10 A: Correct.
11 Q: Did you come to visit with Mr. Coves and Ms.
12 Darden again between January of 2011 and
13 January of 2012?
14 A: Yes, of course.

(Id., p. 54.)

To state the obvious, Ibañez and Coves Darden had an agreement on terms on which the former would be employed by the latter. Because Defendants' motion for summary judgment is limited to the argument that this did not occur, or upon misplaced assumptions that this does not create a contractual relationship, the entire motion should be denied.

III. The Other Grounds Defendants Have Abandoned.

Although Plaintiff has responded to Defendants' "sole issue" in the discussion above, Plaintiff nevertheless addresses for the convenience of the Court, the other issues Defendants appeared to have raised earlier. These include breach of fiduciary duty, tortious interference with the contractual relationship, and violation of the South Carolina Unfair Trade Practices Act. In addressing these abandoned former arguments, Plaintiff continues to object to the lack of discovery in the case.

Under the applicable standards for summary judgment, there is no basis on which to grant any part of Defendants' former motion either. To the extent Defendants present any assertions regarding a purportedly material fact, the assertions require no rebuttal or disputing materials, as Defendants are substantially incorrect on most of the law applicable to the case. Yet, the record already contains genuine disputes of many facts or assertions presented by Defendants. Further, factual assertions of Defendants are untrustworthy and adequate time and opportunity for discovery on Defendants' credibility and other relevant matters has not been allowed.

A. Adequate South Carolina Law Governs the Substantive Theories of Recovery and the Standards of Decision for Summary Judgment.

There is clear controlling law on most of the "issues" Defendants present. Even if the almost exclusively out-of-state decisions cited by Defendants on some issues were to be

entertained as an argument for change in existing South Carolina law, the questions would be novel issues of law applied to a novel factual situation. Novel issues of law are traditionally viewed as ill-suited bases for summary judgment, particularly when discovery has not progressed and factual development of the case has been hampered. Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003)(Anderson, J.)(finding it “extremely troubling” that summary judgment was granted under novel circumstances).

Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Schmidt.

“[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Defendants have made no showing on anything that matters, nor pointed out any absence of evidence on anything that matters.

Since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

Because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a “full and fair opportunity to complete discovery.” Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001); Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); Baughman, 306 S.C. 101, 112, 410 S.E.2d 537, 543.

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000); Mosteller v. County of Lexington, 336 S.C. 360, 520 S.E.2d 620 (1999); Hall v. Fedor, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002); Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001); Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001); Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999); Middleborough Horizontal Prop. Regime Council v. Montedison, 320 S.C. 470, 465 S.E.2d 765 (Ct. App. 1995).

"In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." Brockbank v. Best Capital Corp., 341 S.C. 372, 378-79, 534 S.E.2d 688, 692 (2000).

B. The Only Partially Developed Facts, Viewed – As They Must Be – In the Light Most Favorable to Plaintiff, Reveal Not Only a Breach of Contractual Duties by Ibanez, But Also A Breach of Fiduciary Duties by Him, and Tortious Interference and Other Unfair Competition by Derr and Half Moon.

Because it is a fact-intensive case, and full truthful discovery of the true facts has barely begun, Plaintiff must summarize here, at length, only some of facts of record which emerge when all facts are reviewed under the correct summary judgment standard.

In and before January of 2012, Coves Darden made arrangements to sponsor Ibañez's

travel to the United States from Spain, and entry into the United States on a nonimmigrant visa issued by the United States, so that he could work exclusively for Coves Darden. (Coves aff.) It involved expenditure of much time and money on the part of Coves Darden, risk by both parties as to whether and on what terms the visa would be granted, development of a trusting personal relationship with Ibañez, and a decision of Coves Darden to expressly repose its trust and confidence in him. (Id.) Ibañez invited and accepted this trust. (Id.)

Coves Darden first visited with Ibañez in Spain in 2010, and then paid his travel to the home of Coves and Darden in Springfield, S.C. for visits to explore the matter. (Id.) These were not just visits of a day or two. (Id.) Ibañez ended up agreeing to be the godfather of Coves and Darden's child, and referred to Coves on almost familial terms. (Id.) At one later point, Coves and Ibañez even ripped their shirts open to bare their chests in a "Flamenco" ritual to show "co-fathership." (Id.) In some correspondence, Ibañez addressed Coves as "Compare," meaning roughly, co-father. (Id.)

Before Ibañez agreed with Coves Darden on the terms of the relationship which was to follow, Ibañez got a good look at the horses of Coves Darden and Ibañez said he thought well of them. (Id.)

In the initial visits, Ibañez' affiliation with Coves Darden was publicized, and at one or more events at the Coves Darden stable, Coves believes Ibañez was introduced to Derr or persons affiliated with her, among others invited. (Id.)

Coves Darden entered into an agreement to employ Ibañez to act as an expert equestrian trainer, and to provide expert instruction and consultancy services in the equestrian arts for clients of Coves Darden Farm. (Id.) Both Coves Darden and Ibañez acknowledged that they

expected the relationship to continue for at least two years. (Id.) The probable expected initial length of the visa was three years, and Ibañez' likely initial leave of absence from his prior employment relationship was to be two years. (Id.)

Under the terms of the agreement, Coves Darden agreed to pay Ibañez 6000 Euros per month (a little less than \$8,000 U.S.), furnish him a house, and pay for his transportation to work. (Id.) Ibañez agreed to work completely and exclusively for Coves Darden during the term of the agreement. (Id.) Coves Darden also agreed to pay for Ibañez' individual travel to the U.S. on the first entry under the visa. (Id.)

Ibañez was quick to commit Coves Darden to the matter, so much so, that he commenced his leave of absence from his former employer in Spain (The Royal School) before Coves could apply for a visa for him. (Id.) Coves Darden had to explain to him that he could not come to the U.S. to commence work until Coves Darden obtained the visa. (Id.)

Coves Darden then agreed to begin paying Ibañez a stipend of the same amount in Spain before he commenced work in the United States, while he awaited arrangements for the visa. (Id.) He often communicated when his money was not available on the very first of the month. (Id.)

In Spain, Coves Darden acquainted him with its primary source of horses in Spain, involved him at the site in Spain with their friend and business contact there, and asked Ibañez' assistance in riding and selecting horses. (Id.) The friend and business contact provided Ibañez and his family various accommodations. (Id.)

Coves Darden paid Ibañez' travel again to the United States for several months in the time before the visa was granted, during which time Coves Darden allowed him to become

familiar with the horses and farm in the absence of Coves and Darden, and asked him to live in the house and look after things for Coves and Darden while they were gone. (Id.) Coves Darden continued to host Ibañez and his family and visited with him further when Coves and Darden returned. (Id.)

Coves Darden arranged for and paid for the application for and processing of, the nonimmigrant petition allowing Ibañez to enter the United States. (Id.) He brought his whole family. Coves Darden paid the legal expenses pertaining to this process, and paid for Ibañez's travel expenses from Spain to the United States. (Id.)

In the course of applying for the visa, some common aspects of the agreement were reduced to writing and submitted to the immigration authorities as the terms which would govern the employment if the visa was granted. (Id.)

Coves Darden furnished Ibañez and his family a home to live in near the stables where the horses were to be trained, and purchased and furnished for Ibañez's use while in the United States, an automobile. (Id.) Coves Darden paid Ibañez \$8000 per month (annualized to about \$96,000 per year). (Id.) Coves Darden also furnished him with a family dog. (Id.)

The basis for the nonimmigrant visa, known as an "O-1 visa," was Ibañez's peculiar, extraordinary, and unique ability to train the particular breed of horses in question, generally known as "Spanish Horses," or "P.R.E." (Pura Raza Espanola). (Id.) Additionally, Coves Darden had a particular need for this level of expertise, because of the size of the Coves Darden operation, the particular breed in question, and the level of breeding and competition to which Coves Darden aspired. (Id.) Virtually all Coves Darden's horses are P.R.E., and they have won many awards. (Id.) Coves Darden has as many as 85-90 at a time. (Id.)

The O-1 visa itself, incorporated into the contract, required that Ibañez work exclusively for Coves Darden as a trainer. (Id.) Coves Darden was very clear that regardless of the visa, this was an exclusive relationship and that it would take time and a moral commitment for Coves Darden to get the financial benefit out of the extraordinary effort and expenditures Coves Darden was investing in it. (Id.)

Coves Darden hired Mike Liberatore, a Miami immigration lawyer, to painstakingly assemble the extraordinary visa application for Ibañez. (Liberatore aff.) Coves Darden had Liberatore prepare some of the common written terms of employment to submit in support of the visa application subject to the final review of South Carolina legal counsel. (Id.; Coves aff.) The contract was to be effective upon the visa being granted and Ibañez entering the United States. (Liberatore aff.) Coves Darden had Liberatore go over the employment agreement with Ibañez on the phone, prepare him on the phone for the visa interview in Spain, and explain the limitations of the visa and the employment agreement to him. (Id.) Liberatore discussed point by point, each part of the employment agreement with Ibañez, as part of the interview prep. (Id.) Immigration provides the Embassy with a complete copy of the immigration case file, including the employment agreement. (Id.) An O-1 visa, by its terms, allowed Ibañez only to work for Coves Darden. (Id.)

The visa did not allow Ibañez to work for other people while he was working for Coves Darden. (Id.) The O-1 visa requires that the nonimmigrant work only for the permitted employer and not work in any other way – even for himself as an entrepreneur. (Id.) When the employment ends, the visa holder must leave the country, or apply for a change of status before the employment terminates. (Id.) One of the concerns of the United States immigration and

labor laws regarding temporary visas based on work positions is that the public impact of the nonimmigrant working gainfully be minimized by restricting when the nonimmigrant can work, what kind of work he is allowed to do, and how much he must be paid. (Id.)

Accordingly, the immigration laws are very specific that the alien work gainfully and stay in the U.S. only within the parameters of the visa he receives. (Id.) He cannot simply rely on a visa to get into the country and then set up his own shop, change jobs or type of work, or take on additional jobs. (Id.)

Under immigration law, Ibañez was prohibited from working for anyone other than petitioner company Coves Darden. (Id.) There were no exceptions to the rule. (Id.)

Ibañez' status did not allow him to work for another employer after hours, during the time he was employed by Coves Darden. (Id.)

The O-1 visa does not allow the nonimmigrant to make side money from another employer or on his own while employed by the petitioning employer. (Id.) The nonimmigrant is not allowed to freelance. (Id.)

Ibañez entered the United States on the visa and commenced work for Coves Darden in February of 2012. (Coves aff.)

Before he would engage in a competition, Ibañez would work with a horse for weeks. (Coves aff.) Although for the first competition Ibañez entered, the training of the horses and other preparation began over a month earlier, Ibañez did not win and explained that he had studied the wrong test or set of rules or instructions for the competition. (Id.) Derr, who also owns a small number of the same breed of horses was present in the same competition, and did better than Ibañez. (Id.)

By early June of 2012, preparations by Coves Darden had long been underway for another competition in Georgia. (Id.) The competition was on a Saturday, and entrance fees, lodging for people, and lodging for horses had to be arranged and committed in advance. (Id.) Departure from Aiken, with the horses, was scheduled for early the Friday before (Id.). Ibañez was the rider. (Id.)

Around this time, Ibañez mentioned making up for some missed hours in subsequent weeks. (Id.)

Despite having assured Coves Darden in advance that he foresaw all of the logistics and needs for the impending Georgia competition, Ibañez did not appear for work on the Friday loading and travel day before the competition. (Id.) Later in the day, the plans had to be cancelled. (Id.)

When there was no appearance by, or word from, Ibañez on Saturday, Coves Darden discovered Ibañez' residence abandoned, his car left at the residence, and a notice that he had ended his employment. (Id.) The notice was never sent to Coves Darden. (Id.) Ibañez did not give any advance warning. (Id.) He certainly did not give notice like that required under the contract. (Id.)

Coves Darden had also scheduled official entry and participation in another competition in Georgia for approximately one week later. (Id.) Ibañez was the rider. (Id.) This competition also required advance commitments of entry fees, lodging for people, and lodging for horses. (Id.) Ibañez knew this. (Id.) This competition too, had to be cancelled. (Id.)

Both competitions were necessary in order to advance to further levels of

competition. (Id.) Additionally, in the competitions themselves, success would enhance the value and reputation of the horses. (Id.) In addition, in the first competition, prize money was available for certain levels of success, and in this instance a success would have been very probable. (Id.)

For many forms of competition, commitment to enter the competition, along with a commitment of entry fees, must be made two or more weeks in advance of the competition. (Id.) For many forms of competition, a month or more of the rider training with the horse is required. (Id.) Shortly after receiving Ibañez's notice that he was breaking his employment agreement with Coves Darden, Coves Darden discovered that Ibañez had been registered to ride and show a horse for Derr in a shortly upcoming competition. (Id.)

Coves Darden has discovered that Ibañez had signed up with Derr in mid-June, 2012, to participate on her horse in Georgia in a show in July. (Id.) It also now appears that Ibañez actually participated around June 23, 2012 on Derr's horse in a competition in North Carolina about 15 days after abandoning Coves Darden. (Stanton Discovery Status Affidavit.) Derr has not disclosed when arrangements were made for the mid-June entry in North Carolina, or when Ibañez began training with the horse. (Id.) Generally, there is an advance cut-off to register for such events. (Coves aff.) In fact, Derr claims to maintain no records of her applications to enter shows, despite running a well-advertised stables operation as a business. (Stanton Discovery Status Affidavit.)

In her deposition, Derr testified that, other than one instance in April, 2012, Ibañez had never ridden her horse prior to August 1, 2012 unless the horse was ridden without her knowledge in her absence, which she would not have minded. (Derr depo. at 81-82; Stanton

Discovery Status Affidavit.) A subpoena directly to the sponsors of the North Carolina event reveals that Derr and Ibañez registered on June 2, 2012. (Stanton Discovery Status Affidavit.)

As an employee of Coves Darden, and particularly as a special employee of Coves Darden under a specialized agreement, and as an employee in which Coves Darden specifically reposed trust and confidence (as evidenced by Coves Darden's expenditures for, and accommodations of, Ibañez, and the responsibilities and "branding" Coves Darden confided to Ibañez' charge), Ibañez, Coves believes, owed high duties of loyalty, honesty and information to Coves Darden. (Coves aff.)

Based upon what Coves has learned, it appears to Coves that Ibañez began feathering his own nest right away, and planning his deceptions, rather than trying to advance the interests of Coves Darden Farm. (Id.) It appears Ibañez escalated his desire to work against Coves Darden's interests, to the end of advancing his own and the interests of others, after he received: accommodations, introductions and payments from Coves in Spain; the benefit of several U.S. vacations largely at Coves Darden's expense; introductions and publicity in the U.S. and particularly in the Aiken area; the fruits of Coves Darden's efforts to assemble the documentation for his unusual if not extraordinary visa; the benefits of Coves Darden's expenditure of legal fees on Miami immigration counsel; a visa to the U.S. allowing work in his field; acclimatization in the U.S. in a house Coves Darden furnished; and a comfortably supported opportunity to obtain a social security number, driving credentials, school enrollment for his daughter, banking facilities, etc. (Id.)

In Coves' estimation, as a result of theses breaches of duty, Coves Darden was damaged, and never received the material part of its bargain – an honest, loyal, employee. (Id.)

According to Coves, Ibañez breached his contract with Coves Darden. (Id.) Ibañez breached the written agreement which he knew existed, and he breached the underlying agreement he and Coves Darden had clearly reached before the contract was even written up. (Id.)

The breach caused Coves Darden actual damages, including special damages. (Id.)

The actual damages include all money spent making arrangements for Ibañez's visa, paying for Ibañez's travel, furnishing Ibañez a car and home, and dog, and all sums paid to Ibañez as salary or otherwise. (Id.) The damages also include money lost on entry fees, lodging for people, and lodging for horses, for competitions which were missed, as well as damages for the lost opportunity to compete in the competitions. (Id.)

Ibañez' breach of contract was accompanied by one or more separate but related fraudulent acts. (Id.) Namely, Ibañez, before leaving notice of termination of his employment and outright breach of the contract, had secretly been breaching the contract by secretly working with Derr's horses. (Id.) Upon information and belief, Ibañez intentionally compromised his own performance and duties to advance Coves Darden's interests in order to develop his own contacts and to promote the performance of Derr, all at Coves Darden's expense. (Id.) Additionally, when asked about the upcoming first competition in Georgia, Ibañez falsely indicated that he was prepared and ready to go forward, thus intentionally inducing Coves Darden to go forward with its plans, causing greater damage. (Id.)

It appears, now, that in order to induce Ibañez to breach his duties to Coves Darden, Derr offered as an incentive, an ability of Ibañez to carry on his own side business or other endeavors in which he could earn money directly from others. (Id.)

Ibañez's breach of contract was accompanied by fraudulent intent. (Id.)

It is Coves' belief that Derr intentionally interfered with Coves Darden's contract and relationship with Ibañez. (Id.)

Coves believes Derr did so secretly, while knowing Ibañez' expenses were being paid for by Coves Darden. (Id.)

Upon employing Ibañez, Derr misleadingly advertised his purpose for being in the United States and working for her as his being "on an extended teaching sabbatical," "based at Half Moon Stables." (Id.) This contradicted promotions Coves Darden had made, publicizing his identification with Coves Darden's stables. (Id.) Coves Darden underwrote the expense of getting him to the United States. (Id.) He came to Coves Darden Farm as his destination. (Id.) He came to train Coves Darden horses and eventually teach some of Coves Darden's clients. (Id.) Coves Darden paid for it. (Id.) He was not out for an open teaching sabbatical. (Id.) And his destination and sponsor certainly was not Half Moon Stables. (Id.) Derr's advertisement is misleading and has a tendency to mislead. (Id.)

Coves believes Derr's actions in inducing Ibañez' breaches, and misleadingly advertising Ibañez' status and initial sponsorship in the U.S., and apparent facilitation of violation of the U.S. immigration and labor laws to constitute unfair methods of competition and unfair or deceptive acts or practices. (Id.)

Coves believes such actions are not fair competition, are additionally likely to lead to disclosures of private information about the operation of Coves Darden Farm and aspects of its horses, and directly undermine a fair and bargained-for agreement for exclusivity. (Id.) The actions appear to have been committed in a secret, deceptive, and patently dishonest manner.

(Id.) During the course of this lawsuit, Ibañez has made disparaging remarks about Coves Darden's horses, and Derr has relayed his comments as well. (Id.) Coves presently can imagine what other false disparagement and rumor mongering has occurred. (Id.)

Coves Darden's level of commitment to the endeavor of breeding and showing and competing with P.R.E. horses is consistent with an aspiration to proceed to high levels of international prominence, including competition in the Olympics. (Id.) Coves Darden has been set back by the activities of Derr. (Id.)

Coves has seen the visa application Derr eventually filed to cover Ibañez' employment at Half Moon. (Id.) It is Coves' impression that Ibañez probably initially worked for Derr illegally and that his present arrangement still may not be legitimate. (Id.) The visa application Derr filed appears to have made extensive use of materials Coves Darden gathered at great time and expense. (Id.)

C. Defendants Have Neither Complied With Discovery nor Allowed Reasonable Time and Opportunity for Discovery.

1. Defendants' Discovery Responses Cannot be Trusted to Present Anything Bearing on a Material Fact No Matter What Defendants Say.

Also directly relevant to summary judgment is whether anything Defendants say can be believed. Cf. Fed.R.Civ.P 56, Notes of Advisory Committee on 1963 Amendment (where an issue as to a material fact cannot be resolved without observation of the demeanor of witnesses in order to evaluate their credibility, summary judgment is not appropriate, despite evidentiary matter presented by moving party). Although it is possible to make a mistake or to misspeak,

much of Defendants' interrogatory answers, responses to requests for production, and deposition testimony are demonstrably false, even under some degree of compulsion.

Plaintiff sent first interrogatories and requests for production to Defendant Half Moon on October 17, 2012. (Pl. Motion to Compel dated December 6, 2012.) Plaintiff also began efforts to take Ibañez' deposition on October 26, 2011, when Plaintiff sent the first notice for December 12, 2012. (Pl. Motion to Compel dated January 30, 2013; Rule 56(f) aff., dated February 28, 2013.) Plaintiff's difficulty in thereafter getting the deposition taken is addressed further below.

On December 6, 2012, having received no responses to interrogatories, requests for production, or requests for admissions, Plaintiff filed a motion to compel.⁹

On December 10, 2012, before any Defendant had ever complied with the first bit of discovery propounded by Plaintiff, Defendant Ibañez signed an affidavit. It had information attached, regarding his leave of absence from the equestrian school for whom he had worked in Spain. The affidavit was not disclosed to Plaintiff.

On December 14, 2011, after Plaintiff had filed a motion to compel, Defendant Half Moon, through counsel, responded to Plaintiff's first interrogatories. (Responses attached to January 30, 2013 Motion to Compel.) In response to requests for identification of persons who have knowledge of discoverable matters, Half Moon responded – three days after the written statement had been taken from Ibañez -- that Ibañez was a witness, but that “no written or recorded statement” had been taken from him. (*Id.*) This was untrue.

⁹There was likely some extension of the initial deadline and this motion was later withdrawn in anticipation of receiving responses.

The interrogatory response also supplied no other information whatsoever about what facts were known to or observed by Ibañez, despite the fact that an affidavit and documents had already been obtained from him by his counsel. (Id.)

On December 17, 2012, Defendants also produced some documents purportedly responsive to Plaintiff's request for production. (Stanton Aff. Re Discovery Status.) The December 10, 2012 affidavit of Ibañez was not produced or otherwise disclosed. (Id.) Defendants objected to some of the requests for production on the basis that Defendants could not determine what was relevant to the case. (See discovery responses attached to January 30, 2013 motion to compel and for sanctions.) A signed, sworn affidavit of a party defendant on paper captioned with the name of the pending case is relevant to the case.

On January 28, 2013, Defendants filed a document purporting to be a summary judgment motion. However, contrary to Rules 6(d), 7(b)(1) and 56(c), SCRCP, it stated no grounds, was not accompanied by any affidavits, and stated that the grounds would be submitted later in the form of a memorandum of law.

Plaintiff's efforts to take the deposition of Ibañez continued and are detailed in the motion to compel (and for sanctions) filed January 30, 2012 and the Rule 56 affidavit filed February 28, 2012.

On February 28, 2013, three days before the hearing of the "motion" for summary judgment, defendants filed a memorandum along with various other materials. Included was the December 10, 2012 affidavit which had been inaccurately stated not to exist in the interrogatory answers and which had not been filed at the time of filing the "summary judgment motion."

At the partial hearing March 5, 2013, the Court ordered the deposition of Ibanez to be taken in March, 2013. Defendants provided a date of March 26, 2012 and Plaintiff took it that day.

As of this writing, it has been a few weeks since the receipt of the transcript and Plaintiff has timely pursued other discovery since then, with which Defendants have refused to comply. (Stanton Affidavit Re Discovery Status.)

To give the Court an idea of the outlandish lack of credibility of some things Ibañez says, the following is his testimony concerning how the "people of Aiken" paid to hire a Miami immigration lawyer to set up Ibanez' visa so that he could work for Half Moon, even though, according to Ibañez, he had not at that time ever had a discussion with Half Moon concerning being employed by it:

14 Q: Mr. Garcia, I am trying to get you to tell me
15 specifically the back and forth between you and
16 Half Moon that resulted in your working for
17 Half Moon rather than a cloud of sentiment from
18 other people who might have thought it was a
19 good idea.

20 A: I can't remember who in the city gave me the
21 telephone number, and we started talking.

22 Q: You called Half Moon?

23 A: Yes.

24 Q: With whom did you speak?

25 A: With Mrs. Derr.

1 Q: Did you know upon calling that she was the
2 proper person to speak with?

3 A: I don't understand.

4 Q: How did you know the right person to ask for?

5 A: I had met her before.

6 Q: Okay. Where?

7 A: At Half Moon.

8 Q: On that visit that you described?

9 A: The first visit.

10 Q: Was that the only visit?

11 A: Yes.
12 Q: So having met her only once, you then
13 telephoned her?
14 A: Yes.
15 Q: When was the call?
16 A: I don't remember exactly, but possibly the 8th
17 or 9th of June.
18 Q: Was it after you left Coves Darden?
19 A: Yes.
20 Q: Then why was a lawyer applying for a transfer
21 of the visa as early as June 1, 2012?
22 A: Because the attorney was trying.
23 Q: Do you know why a visa application would have
24 been underway June 2, 2012 if you did not ask
25 Ms. Derr for a job until after June the 7th?
1 A: Well, like I said before, the people of Aiken
2 were going to try to help me with my situation.
3 Q: Did the people of Aiken hire a Miami attorney
4 to prepare a visa transfer application changing
5 the employer from Coves Darden to Half Moon
6 Stables?
7 A: Yes.

(Ibanez Depo., pp. 108-110.)

The testimony of Ibanez is incredible on its face. Plaintiff has sought follow-up discovery on the timetable of the hiring of Miami immigration counsel by Half Moon, but Defendants have not complied and Defendants have filed a motion to stay discovery. (Stanton Affidavit Re Discovery Status; see also Transcript of no-show for deposition of Half Moon.)

In the Order from the March 5, 2013 hearing, the Court also ordered the Defendants to produce, within 15 days, documents in response to Items (5), (7), and (8) of Plaintiff's October 17, 2012 initial request for production.

Item (7), for example, requested "[a]ll applications or enlistments of Ibañez for participation in any competitions or shows or any applications or enlistments mentioning Ibañez

as an expected or potential participant.” (Request attached to December 6, 2012 Motion to Compel.) Defendants produced none of these. (Stanton Affidavit Re Discovery Status.)

Defendants produced on March 20, 2013, in total, documents represented to be “checks to Francisco, Francisco’s scores, and SCE&G billings.” (Id.) The requests asked for more than simply these materials.

Undersigned counsel followed up by e-mail, acknowledging, of course, that one could not be compelled to produce what one does not have, but asking, nevertheless, that the request be re-examined to see if no records of the sort, whatsoever, were retained in the business of Defendant Half Moon. (Id.) The request was not limited to shows Ibañez actually followed though with and participated in. The request was for any applications.

The records of “Francisco’s scores” do not appear to have been maintained in Half Moon’s possession. The records appear, rather, to have been obtained by Half Moon for the purpose of the response. The one-page sheet bears a computer print date of “3/12/13,” just days before the response was provided. (Id.) The fact that the Defendants chose to go out and obtain some information for the response, but to obtain only partial information, is telling.

One purpose of the inquiry was obviously to examine how long Ibañez was practicing with, and working for, Half Moon before he quit working for Plaintiff on June 7, 2012. It is common knowledge in the horse community (and supported in the record) that one works with a horse weeks in advance of entering a competition with the horse. The “scores” Defendants provided were only for USDF competitions and the earliest was for October 6, 2012. (Id.)

It would appear that Defendants purposefully only obtained the scores for shows with later dates.

In Derr's deposition is a document contradicting Derr's testimony. It was an application dated June 20, 2012, for an event in July. If Ibañez and Derr did not proceed to participate in the event, there would be no score, but the lack of a score does not establish the lack of an application. Producing only scores avoids producing the application.

Attached to the Stanton Affidavit re Discovery Status is the response of the NCDCTA (North Carolina Dressage and Combined Training Association) to a subpoena. It is an application filed by Derr and Ibañez even earlier, on June 2, 2012. It is for an event June 23 and 24.

On the date of this document, June 2, 2012, Ibanez was still on the Coves Darden payroll, This was an event Ibañez did ride in. This is a USEF event rather than a USDF event.

"Francisco's scores" for the June NCDCTA event are available on the web and a printout is attached to the Stanton Affidavit re Discovery Status. This document puts Francisco Garcia Ibanez on Derr's horse, Tomillo VII, for an FEI Intermediate II class of competition. The only higher class of competition is apparently Grand Prix.¹⁰ (Derr depo. at 120 (one of "the two highest forms of competition").) Although Defendants chose to produce scores of Ibanez, rather than applications he was listed on, the "scores" Defendants chose to obtain and produce did not include this score or event.

In conclusion, time after time and on an objective basis, Defendants have ignored and resisted straightforward discovery and misunderstood explicit requests and questions and given

¹⁰It is noted that the score of 55.789% does not appear to be a high one, but that is not a reason to omit the document with no consultation, explanation or objection.

untrustworthy answers even when under a degree of compulsion or repeated inquiry. Therefore, nothing they present in support of their summary judgment motion can be trusted.

2. Defendants' Discovery Noncompliance Alone Warrants Denial of Their Motion.

As indicated in part in Plaintiff's January 30, 2013 motion to compel and for sanctions, Rule 37, SCRPC also provides a basis for this court to deny summary judgment as well as limit the ability of Defendants to present evidence on certain defenses.

D. An Employee is, by Definition, an Agent, and an Agent is, by Definition, a Fiduciary; Employees are Fiduciaries and There is no Such Thing in South Carolina as a "Non-fiduciary" Employee.

In their Memorandum at 8, Defendants erroneously argue that Ibañez could not have been in a fiduciary relationship.

Regardless of contract, the employment relationship is one of principal and agent, and includes fiduciary duties of the employee to the employer. Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 518 S.E.2d 591 (1999).¹¹

It is undisputed that Ibañez became an employee of Coves Darden. An employee, by definition, is an agent. Restatement (Third) of Agency § 1.01 (2006); id., Official Comment G; and see id. § 7.07 (3)(a) ("an employee is an agent who"). An agent, under black-letter law, owes fiduciary duties to the agent's principal. See, e.g., Restatement (Third) of Agency § 8.01

¹¹Defendants erroneously state that this solid proposition is "an open question under South Carolina law." (Def. Mem. at 8.) Even if it were an open question, summary judgment on such questions is discouraged. Schmidt.

(2006)(stating the general fiduciary principle of loyalty before other sections on other duties). Even in a hypothetical bare-bones “at-will” employment relationship, Ibañez owed to Coves Darden, fiduciary duties of loyalty and information. Restatement (Third) of Agency § 1.01 (2006).

Because the relationship was additionally one involving a special trust and confidence and extraordinary measures and accommodations by Coves Darden, these fiduciary duties were heightened, imposing upon Ibañez duties of full disclosure, breach of which would be viewed as fraudulent nondisclosure. Defendants refer to Ibañez perfunctorily as a “non-fiduciary employee.” This term is foreign to South Carolina caselaw (and most other) and is internally inconsistent under controlling South Carolina law. Ibañez was a fiduciary.

E. In South Carolina, a Fiduciary Relationship and Fiduciary Duties Can be Created by Special Circumstances.

In South Carolina, fiduciary duties also arise in relationships, as here, in which one party expressly reposes trust and confidence in the other. Armstrong v. Collins, 366 S.C. 204, ___, 621 S.E.2d 368, ___ (Ct. App. 2005) (citing, inter alia, Island Carwash v. Norris, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct. App. 1987)). Under the facts viewed in the light most favorable to Coves Darden, special circumstances clearly existed which independently created fiduciary duties of Ibañez to Coves Darden.

F. Ibañez was a Highly Paid Person of International Renown Brought into Plaintiff's Home on Trust, Confided with the Task of Enhancing Plaintiff's Brand, and Put in Charge of Millions of Dollars' Worth of Live Inventory.

In their Memorandum at 9, Defendants attempt to lessen the distastefulness of Ibañez' various callous and scheming betrayals, by distinguishing him from other defendants in South Carolina caselaw who have been held to owe fiduciary duties to their employers. Asserting that Ibañez was "non-managerial," Defendants argue he had no fiduciary duties.

Even if one were to disregard contractual theory in its entirety and ignore all of the terms the parties expressly agreed upon, it is still an undisputed fact that Ibañez entered into an extraordinary relationship with Coves Darden, in which Coves Darden expressly reposed trust and confidence in Ibañez.

If ever there was a worker who was acting in a fiduciary capacity, it was Ibañez. He was responsible for selection, training, riding, supervising and establishing the good name of millions of dollars' worth of the employer's unique inventory: its purebred horses. This position was one of incredible responsibility, involving high levels of trust, dedication and specialized knowledge.

Nowhere have Defendants negated the fact that Plaintiff (Coves Darden) and its two principals, Miguel Coves and wife Dorothea Darden, expressly reposed trust and confidence in Defendant Francisco Jose Garcia Ibañez. (See, e.g., Coves aff., ¶¶ 2 and 26 .) They entered into a special and extraordinary relationship with Ibañez, who is a Spanish national. Under this relationship, Coves Darden had numerous discussions with Ibañez concerning the prospects of his coming to the United States from Spain for two years. The parties contemplated that Ibañez would undertake the development of the dressage capabilities of Coves Darden's specialized breed of horses, and do so exclusively. Ibañez' affidavit is deadly silent on the whole issue.

They had him come stay at their farm, including staying in their home, for several visits. They hired a lawyer to painstakingly assemble an extraordinary visa application for him. They

had a lawyer prepare the common written terms of employment to submit in support of the visa application. They paid Ibañez a stipend while he was in Spain waiting on the visa. They had the lawyer go over the employment agreement with Ibanez on the phone, prepare him on the phone for the visa interview in Spain, and explain the limitations of the visa to him. They obtained a visa which, by its terms, allowed him only to work for them. They paid his travel expenses. They trusted their 85-90 purebred P.R.E. horses to him. They trusted their reputation and "brand" to him. They advertised and promoted the fact of his association with them and their farm. They paid him \$8000 per month (annualized to \$96,000 per year), provided him a house, and provided him a car, and a dog.

G. Ibañez did not Merely Terminate his Employment with Coves Darden; He Pre-planned a Program to Exploit Coves Darden for his Own Gain, Then Planned to Compete with Coves Darden, and Lied to the Principals of Coves Darden.

In their Memorandum at 11, Defendants erroneously characterize the actions of Ibañez as merely working for Half-moon in his off-hours before quitting Coves Darden. The contract between Ibanez and Plaintiff was for Ibanez to work exclusively for Plaintiff, and the visa also proceeded on this restriction. No one spends a year and thousands of dollars to bring a professional over from across the ocean so that he can secretly help out the competition on the very things he is charged with doing for his employer.

On June 8, 2012, immediately before a horse show in which he was enrolled to ride for Coves Darden, Ibañez abandoned his duties, left, and quit without notice. He was found to be immediately in the employ of Defendant Half Moon Stables, owned and run by Defendant Derr. Discovery will likely more fully reveal that he had already prepared to compete against Coves

Darden in that show or other shows. Defendants have resisted discovery on this, although they now appear to acknowledge in their own brief at 11, that he was working for them while he was working for Coves Darden.

H. An Action Lies for Both Breaching Duties in an Employment-at-will Relationship, and Tortiously Interfering with Such a Relationship.

In their Memorandum at 11, Defendants erroneously argue that no action lies for breaching duties in an employment-at-will relationship, and that it is also impossible for a third party to tortiously interfere with such a relationship. Contrary to Defendants' premise, the agreed period of employment was at least two years, barring a visa problem or other extraordinary circumstance.

Even where the employment relationship is at-will, an action may be maintained for breach of the fiduciary duties inherent in that at-will employment relationship. Futch v. McAllister Towing of Georgetown, Inc.

An action may also be maintained for tortious interference with a contract, including a contract terminable at will. Bocook Outdoor Media, Inc. v. Summey Outdoor Advertising, Inc., 294 S.C. 169, 363 S.E.2d 390 (Ct.App. 1987); Todd v. South Carolina Farm Bureau Mutual Insurance Company, 283 S.C. 155, 321 S.E.2d 602 (Ct.App. 1984).

The elements of such a cause of action are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. Camp v. Springs Mortgage Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993). Justification for inducing a breach may be viewed as an affirmative defense. Commerce Funding Corp. v. Worldwide Sec. Servs. Corp., 249 F.3d 204,

213 (4th Cir. 2001)(noting that under Virginia law, one must actually possess a financial interest in the business of a third person to justify interference with the business relationship of another and the third person, citing Restatement (Second) of Torts § 779).

As the Court in Bocook stated:

It is obvious Bocook had a contractual agreement of some kind with the various landowners because Bocook had constructed billboards on their properties. Summey was in the same business and would know Bocook had an agreement with the landowners. All Summey had to do was to see the billboards to know or have reason to know of the existence of agreements. It is true Summey probably would not know the details of the leases because they were oral.

Unfortunately, the record does not contain much detail about the various leases and their terms. We do not know whether this is because no evidence was introduced or was introduced but the parties did not consider this information pertinent to the appeal. From what we do have, it appears most of the leases involved a payment by Bocook to the landowner with renewal accomplished by Bocook sending a check to the landowner. James Bocook testified the leases ran until the landowner told him to remove the sign. In some situations, there was a thirty day notice period for the landlord to notify Bocook to remove the billboard. There is no information in the record as to what notice Bocook would give a landowner if it desired to remove the billboard for some reason. From the record, we construe these agreements to be contracts terminable at will. This Court previously held a contract terminable at will is a contract upon which an action for interference with contractual relations may be brought.

Bocook, 363 S.E.2d at 394.

When the contract in question is “at-will,” it is sufficient that there only be a reasonable expectation that, but for the interference, the contract would have continued. Santoro v.

Schulthess, 384 S.C. 250, 681 S.E.2d 897 (Ct. App. 2009).

Even in the absence of a binding contract and in the absence of an at-will employment relationship, an action may also be maintained in South Carolina for intentional interference with prospective contractual relations. Crandall Corp. v. Navistar Int’l Transp. Corp., 302 S.C. 265, 395 S.E.2d 179 (1990). The elements of such a cause of action are: (1) the intentional

interference with the plaintiff's potential contractual relations; (2) for an improper purpose or by improper methods; and (3) causing injury to the plaintiff. Love v. Gamble, 316 S.C. 203, 214, 448 S.E.2d 876, 882 (Ct. App. 1994). As an alternative to establishing an improper purpose, the plaintiff may prove the Defendant's method of interference was improper under the circumstances. Crandall, 302 S.C. at 266, 395 S.E.2d at 180.

In the instant case, Ibanez and Plaintiff did have a contractual relationship, so the "prospective advantage" prong of analysis is not needed. However, it should be noted that "[i]mproper methods," under Virginia law, "include a wide variety of conduct," including "[m]eans that are illegal or independently tortious, such as violations of statutes, regulations, or recognized common-law rules." Commerce Funding Corp. v. Worldwide Sec. Servs. Corp.; see also Skillstorm, Inc. v. Electronic Data Sys., LLC, 2009 WL 3316358, at *4 (E.D. Va. Oct. 9, 2009) (quoting Duggin v. Adams, 360 S.E.2d 832, 836 (Va. 1987)). In the instant case, it appears Defendants were aided in their interference by violation of immigration laws, among other things.

Determining whether a defendant's methods are improper and whether a plaintiff has demonstrated the elements of tortious interference is ordinarily a matter for the jury and should not be decided in the context of either a motion to dismiss or a motion for summary judgment. Commerce Funding Corp. v. Worldwide Sec. Servs. Corp. (reversing summary judgment grant on the grounds that reasonable jury could find that elements of tortious interference have been met).

I. Inducing Termination of a Highly Responsible Employee by Secretly Accepting the Services of the Employee in Directly Competing Activities, Encouraging the

Employee's Violation of an Agreement for Exclusivity, and Facilitating a
Violation of U.S. Immigration Laws are Improper Means of Inducing
Termination.

In their Memorandum at 11-13, Defendants Derr and Half Moon provide a one-page quote from North Carolina caselaw, but neither present nor argue a single alleged fact. Plaintiff will assume Defendants intend to argue that their actions in interfering with the Coves Darden contract were not improper.

First, improper method of interference is not an element of interference with an existing contract. In the instant case, there was an existing contractual relationship. Bocook; Camp.

Secondly, as for being able to show any sort of justification, Defendants cannot do so. As they had no existing contractual relationship with Ibanez, they cannot show justification.

Commerce Funding Corp. v. Worldwide Sec. Servs. Corp.

As for additional impropriety which would supply a cause of action even if, as in the fiction presented by Defendants, Ibanez had never entered a contractual relationship with Plaintiff, Plaintiff offers the following.

The visa obtained for Ibañez allowed him only to work for Coves Darden. The O-1 visa, as Defendants now well know after having actually applied for one through a reputable Miami immigration lawyer, requires that the nonimmigrant work only for the permitted employer and not work gainfully any other way – even for himself as an entrepreneur. When the employment ends, he has to leave the country. One of the concerns of the United States immigration and labor laws regarding temporary visas tied to specific employers is that the nonimmigrant do the sort of work that was the basis for the visa, and work gainfully only for the permitted employer.

Accordingly, the immigration laws are very specific that the alien work gainfully and stay in the U.S. only within the parameters of the visa he receives. He cannot simply rely on a visa to get into the country and then set up his own shop, change jobs or type of work, or take on additional jobs.

In the instant case, the means of interference were clearly improper in that Defendants Half Moon and Derr appear to have persuaded Ibañez himself to break the United States immigration laws by working in the United States after breaking his relationship with Coves Darden. Defendants have resisted discovery or provided unreliable discovery on this issue. They also appear to have proceeded to employ Ibañez in violation of the United States immigration laws before they could get their "own" visa application was approved. They have resisted discovery or provided unreliable discovery on this.

In order to induce Ibañez with enough financial and personal incentive for it to be feasible for Ibañez to leave Coves Darden, Defendants further did enter into an illegal agreement with Ibañez to facilitate his violation of U.S. immigration laws by allowing him to freelance. This appears in part from the deposition of Derr and from the express terms of the written contract they eventually entered with Ibanez. They have resisted discovery on this. This cooperation in a violation of the law was what made the arrangement financially and personally attractive enough for Half Moon to steal Ibañez from Coves Darden and appropriate the fruit of what Coves Darden worked long and spent much money on.

So, if Defendants are arguing that his employment was at-will and that the status allowed him to work for them after hours, while he was employed by Coves Darden, and if they are

actually admitting this in their brief at 11, then there is prima facie evidence of but one of many immigration law violations. This is also "public impact" under the UTPA.

Post-termination, Defendants continued to violate the law. The illegal compensation deal that Derr used to entice Ibañez away from Coves Darden is remarkable. (See, e.g., Derr depo. at 18 (describing Ibanez as a "free agent").) The side money aspect of the deal is patently illegal. Defendants absolutely were on notice of immigration law requirements. Derr also testified in her deposition that she knew Coves Darden thought it had a "contract" with Ibanez, but that since Ibanez claimed not to have a "copy," she proceeded without concerning herself at all with what it said. Derr depo. at 88-89. Her lawyer husband, who she states handled getting the Miami immigration lawyer to file the "change of employer" application, also apparently proceeded in the same manner.

J. Tortiously Interfering with a Contract by Violating Laws Designed to Protect U.S. Workers is Unfair Competition and an Unfair or Deceptive Act or Practice in the Conduct of Trade or Commerce; Coupling the Interference With Advertisements Having a Tendency to Mislead is an Additional and Related Violation of the SCUTPA.

In their Memorandum at 13-17, Defendants erroneously argue that their actions in interfering with the Coves Darden contract and employing Ibañez were not unfair trade practices. Much of the error and fallacy of this argument is discussed in the preceding section, just above.

The SCUTPA creates new substantive rights by making unlawful, conduct which was not actionable under the common law. State ex rel. McLeod v. C & L Corp., Inc., 280 S.C. 519, 313 S.E.2d 334 (Ct.App. 1984)(discussing the fact that making out all the elements of an existing tort

is not necessary to establish a violation of the SCUTPA). Further, already existing common law torts of unfair competition, such as tortious interference with contract, are per se unfair competition or unfair or deceptive acts or practices in the conduct of trade or commerce, within the purview of the SCUTPA and similar state "Little FTC Acts." See Restatement (3rd) of Unfair Competition §§ 1(a)(3) and (1)(b)(American Law Institute through 2009)(providing that other conduct determined to be unfair competition, and other theories independently existing at common law remain actionable).

The complaint incorporates into the SCUTPA count, all the previous allegations of the complaint, including Derr's tortious interference with contract. Half Moon and Derr's false and misleading advertisement regarding Ibañez being based at Half Moon for "a teaching sabbatical" is icing on the cake.

This misleading advertising is itself actionable. See Restatement (3rd) of Unfair Competition §§ 2 and 3 (one who, in connection with the marketing of goods or services, makes a representation relating to the actor's own commercial activities that is likely to deceive or mislead prospective purchasers to the likely commercial detriment of another is subject to liability; a representation is to the likely commercial detriment of another if the representation is likely to affect the conduct of prospective purchasers and there is a reasonable basis for believing that the representation has caused or is likely to cause a diversion of trade from the other or harm to the other's reputation or good will.)

The advertisement contradicts the prior publicity of Ibanez' association with Coves Darden and implies that he is a semi-itinerant teacher who came to the United States to work and teach with Half Moon, rather than Coves Darden made a huge commitment to promote dressage

and P.R.E. horses in the United States. The advertisement leads one to believe that Half Moon is a place of prominence and established the connections and spent all the effort and money and somehow, by its prominence, attracted the teacher from across the ocean; the advertisement does not convey the truth that Ibanez' presence in the United States was procured at great expense for a very large purpose by Coves Darden Farm.

The same secretive manner in which Half Moon and Derr coordinated Ibañez' departure from Coves Darden is perpetuated in Half Moon's misleading advertising. Rather than announce, in an above-board fashion which would acknowledge a businesslike and straightforward change from one employer to another, that Ibañez has now become employed at Half Moon Farm after a change from other engagements in the U.S., Half Moon misleadingly implies that the man is either on some grand, self-sustaining, independent, public-interest teaching tour and was drawn to Half Moon as a place to lodge himself, or that Half Moon itself arranged – and underwrote – the entire program. This was something it took Coves Darden over a year, multiple visits, and many thousands of dollars to do. Half Moon and Derr essentially stole that work.

Defendants Derr and Half Moon seek refuge in the assertion that when their advertisements are taken separately and out of context, they are technically true under one understanding of the word “sabbatical,” and in the further sense that Ibañez is now based at Half Moon, even though that was not why he came to the U.S.

It is the whole meaning which is deceptive. Further, from a legal standpoint, under the SCUTPA, actual deception is not required. State ex rel. McLeod v. C & L Corp., Inc. It is a tendency to deceive, which constitutes a violation. Id.

A violation of the SCUTPA basically is analyzed as follows:

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The South Carolina Unfair Trade Practices Act makes it unlawful to engage in "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C.Code Ann. § 39-5-20 (1985). "An act is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive; a practice is 'deceptive' when it has a tendency to deceive." S.C. Law of Torts at 372 (quoting Young v. Century Lincoln-Mercury, Inc., 302 S.C.320, 396 S.E.2d 105, 108 (Ct.App.1989) affirmed in part, reversed in part, on other grounds, 309 S.C. 263, 422 S.E.2d 103 (1992) (per curium)).

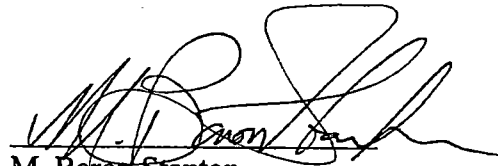
Johnson v. Collins Entertainment Company, Inc., 349 S.C. 613, ____, 564 S.E.2d 653, 665 (2002).

The only partially developed facts of the case, when viewed in the light most favorable to denying summary judgment, show: common law unfair competition in tortiously interfering with contract; improper means and methods violating the immigration laws and affecting the public interest; an interrupted undertaking and relationship which itself affected the public interest in regional and state recognition in horse competitions on an international scale; and misleading advertising which both had a tendency to confuse would-be consumers of Coves Darden's goods and services (P.R.E. dressage training, horse sales, stud services, etc.), and depreciated Coves Darden's investment in its brand. An SCUTPA claim has been fairly put forth.

VI. Conclusion.

Defendants extensively misapprehend the applicable law and have certainly failed to demonstrate an absence of dispute as to the material facts. For these and all the other foregoing reasons, Defendant's motion for summary judgment must be denied.

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF
Coves Darden, LLC

DATE: May 14, 2013

Defendants' reply to Plaintiff's opposition to renewed motion for summary judgment, dated May
17, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	CIVIL ACTION NO. 12-CP-02-01772
	)	
Coves Darden, LLC,	)	
	)	
Plaintiff,	)	DEFENDANTS' REPLY TO PLAINTIFF'S
	)	OPPOSITION TO RENEWED MOTION
v.	)	FOR SUMMARY JUDGMENT
	)	
Francisco Jose Garcia Ibañez,	)	
Dori Derr, and Half Moon	)	
Stables, LLC,	)	
	)	
Defendants.	)	
	)	

Earlier this week, Plaintiff filed a 51 page brief opposing summary judgment. Defendants maintain that the sheer volume of a filing cannot create some triable issue of fact and defeat an otherwise proper Motion for Summary Judgment. In spite of the volume of the filing, Plaintiff's Opposition fails to address the following undisputed matters of fact:

1. Plaintiff has already made a binding judicial admission that there was no oral agreement between the parties. Specifically, Interrogatory 6 from Defendants asked Plaintiff to identify the terms of any alleged oral agreement with Mr. Garcia. In response, Plaintiff stated:

"The agreement was not oral. It was a written contract presented to and acknowledged by Ibanez in or before January of 2012, after August of 2011."

This statement, made in response to an interrogatory under oath should constitute a binding judicial admission. See *Southern Farm Bureau Casualty Ins. Co. v. Ausborn*, 249 S.C. 627 (1967) (admission regarding reason for not issuing an insurance policy made in a Complaint is binding on Plaintiff); *Dyson v. Commonwealth Life Ins. Co.*, 176 S.C. 411 (1935):

"The general rule is well expressed in the following quotations from The Modern

Law of Evidence (Chamberlayne), Vol. 2, § 1268: 'Statements contained in the evidence given by a party as a witness, or adopted by him, are primary in their nature, and constitute informal judicial admissions which affect the party, not only in the trial where given, but in any other hearing of a suit even upon appeal. Such declarations are equally competent, unless the matter is regulated otherwise by statute, in a subsequent case, and although the parties, except the original declarant, are different in the two actions.'"

2. Plaintiff has also made a binding judicial admission that there is no signed contract between the parties. In response to a request to produce a fully executed copy of any employment contract, Plaintiff stated:

"For Defendants' information, Defendant [sic, Plaintiff] believes there are none currently responsive to Request 1 (if requesting one with Ibanez's signature.)"

3. Plaintiff has failed to come forward with any admissible evidence that would create some triable issue of fact regarding the existence of a written contract. Even if it had done so, all that Plaintiff would have accomplished would be to establish facts from which the Court could conclude that there was a written contract that was a) terminable upon thirty days notice by either party without any consequence, and b) contained a clause mandating arbitration of any disputes.

In light of those binding judicial admissions and the failure of Plaintiff to show why the unsigned written contract should otherwise be enforced, this Court should be led to the inescapable conclusion that the relationship between the parties was one of purely at-will employment terminable by either party at any time and without any reason whatsoever.

For the reasons set out previously in Defendants' Motion for Summary Judgment, where there is no contractual relationship between the employer and employee, there can be no cause of action for tortious interference with contract. Further, even in a situation where there is a contractual relationship, there is no cause of action for tortious interference between competitors.

Peoples Security Life Ins. Co. v. Hooks, 322 N.C. 216 (N.C. 1988); *Triangle Film Corp. v. Artcraft Pictures Corp.*, 250 F. 981 (2d Cir. 1918).

Finally, Plaintiff has abandoned its claim that the statement that Mr. Garcia was on an extended sabbatical at Half Moon Stables constituted a violation of the South Carolina Unfair Trade Practices Act. While forced to concede that the statements were true (Plaintiff's Opposition, p. 48 ("[The statements] are technically true under one understanding of the word 'sabbatical,' and in the further sense that Ibañez is now based at HalfMoon")), Plaintiff now argues that the admittedly true statements are somehow false when viewed in some unspecified broader context.

Next, Plaintiff now claims that some unidentified federal laws that are supposedly intended to protect a general class of United States employees have been violated, and that this violation also establishes a violation of SCUTPA. This assertion is simply too amorphous to even address coherently. What is clear is that this new claim, which does not appear in any pleading and has never even been hinted at, is nothing more than the legal equivalent of a Hail Mary pass to attempt to resurrect a cause of action that is otherwise unsupported by any competent evidence.

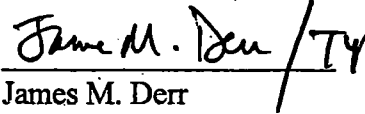
CONCLUSION

Plaintiff's Opposition to this Motion focuses on everything other than the above referenced admissions that there is no oral contract and no written contract of employment. To accept Plaintiff's argument is to accept the fact that merely making bald assertions and suppositions without any solid factual foundation is sufficient to force someone into indentured servitude, or to face punishing consequences for standing up for the principle that every person

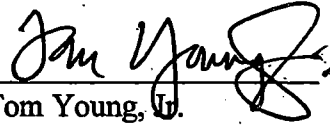
should be entitled to choose with whom he or she contracts.

For the foregoing reasons, and each of them, Defendants respectfully request that the instant Motion be granted.

Respectfully Submitted,

Handwritten signature of James M. Derr, with initials 'JD' and 'TY' written to the right.

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Handwritten signature of Tom Young, Jr.

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May 17, 2013

Aiken, South Carolina

Surreply of Plaintiff to reply of Defendants to Plaintiff's opposition to Defendants' renewed motion for summary judgment, dated May 17, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

Coves Darden, LLC,)

Plaintiff,)

v.)

Francisco Jose Garcia Ibañez,)
Dori Derr,)
and Half Moon Stables, LLC,)

Defendants.)

Surreply of Plaintiff to Reply of Defendants to Plaintiff's Opposition to
Defendants' Renewed Motion for Summary Judgment

It is now clear that Defendants base their entire "no-contracts" argument on a misinterpretation and mischaracterization of a forthright, unsworn initial interrogatory response and response to request for production.

The strained misinterpretation by Defendants is that Plaintiff contends or admits that no oral contract exists, and that Ibanez never signed a written contract.

To the contrary, Plaintiff contends that between December of 2010 and January of 2012, Plaintiff entered into an agreement for employment of Ibanez on certain terms, and that incident to applying for the visa which was part of those terms, the parties reduced the common terms of the agreement to writing. The written document may or may not have been countersigned by Ibanez.

The strained but emphatic misinterpretations in question are contrary to:

1. The complaint;

2. The extensive sworn testimony of Defendant Ibanez himself;
3. The extensive sworn affidavit of Coves; and
4. The other portions of the interrogatory responses.

As already covered in Plaintiff's Brief in Opposition, the unsworn initial interrogatory response was intended to clarify that the contract was not simply oral -- that the parties did reduce the common terms of their agreement to writing, and that they would produce their copy. This is the part that Defendants excerpt from the fourteen- (14) page interrogatory response: "The agreement was not oral. It was a written contract presented to and acknowledged by Ibanez in or before January of 2012, after August of 2011." (Interrogatory Answer 6.)

Other parts of the fourteen- (14) page interrogatory response give the full context for the claims made by Plaintiff. It is assumed Defendants already knew of many of these things, as much of the contract formation process and the terms agreed to was corroborated by Ibanez in his sworn testimony, once the Court ordered his deposition and Plaintiff was finally able to take it. Plaintiff also recounted in the interrogatory response:

In and before January of 2012, Plaintiff made arrangements to sponsor Ibañez's travel to the United States from Spain, and entry into the United States on a nonimmigrant visa issued by the United States. Plaintiff entered into an agreement to employ Ibañez to act as an expert equestrian trainer, and to provide expert instruction and consultancy services in the equestrian arts for clients of Plaintiff. Under the terms of the agreement, Plaintiffs agreed to pay Ibañez EUR 6000 per month and pay for his transportation to work. Ibañez agreed to work completely and exclusively for Plaintiff during the term of the agreement. Plaintiff arranged for and paid for the application for and processing of, the nonimmigrant petition allowing Ibañez to enter the United States. Plaintiff paid Ibanez a stipend while he awaited processing and travel. Plaintiff paid the legal expenses pertaining to this process, and paid for Ibañez's travel expenses from Spain to the United States. Plaintiff furnished Ibañez and his family a home to live in near the stables where the horses were to be trained and, purchased and furnished for Ibañez's use while in the United States, an automobile. Plaintiff paid Ibañez \$8000 US per month. The basis for the nonimmigrant visa, known as an "O-1 visa," was Ibañez's

peculiar, extraordinary, and unique ability to train the particular breed of horses in question, generally known as "Spanish Horses," or "P.R.E." (Pura Raza Espanola). Additionally, Plaintiff had a particular need for this level of expertise, because of the size of Plaintiff's operation, the particular breed in question, and the level of breeding and competition to which Plaintiff aspired. The O-1 visa itself, incorporated into the contract, required that Ibañez work exclusively for Plaintiff as a trainer. Ibañez entered the United States and commenced work for Plaintiff in January of 2012.

(Interrogatory Answer 7.)

As for whether the contract was in writing, and as to whether there is a copy of the written contract countersigned by Ibanez, as of this Surreply, Plaintiff indeed has yet to find a copy countersigned by Ibanez. Ibanez has never stated that he did not sign one. Defendants certainly did not submit a statement by him to this effect in support of his motion for summary judgment.¹ But Plaintiff has not stated that Ibanez did not sign one. In Plaintiff's interrogatory response, Plaintiff plainly stated, "It may or may not have been countersigned by him."

(Interrogatory Answer 6.)

But for the record, the assertion by Defendants in their Reply and their Motion is way off base. The request for production was for fully executed copies of the contract in Plaintiff's possession. The response was that Plaintiff would produce what Plaintiff had "within Plaintiff's possession." The response was further that, in order to save time, Plaintiff wanted Defendant to know that Plaintiff "believed" that there were none currently within Plaintiff's possession which bore Ibanez' signature. Plaintiff did not mean, and does not believe Defendants understood, that Plaintiff was asserting that none existed in Ibanez' possession or anywhere else in the world.

¹Plaintiff would need to look at Ibanez' deposition again on this, which deposition was taken after the motion for summary judgment was filed.. He does either assert or strongly imply he did not have a copy at some point when he and Coves were later referring to the written document.

Notably, in moving for summary judgment, Defendants adduce absolutely no affidavits or evidentiary materials asserting that Ibanez never entered into any sort of employment contract with Plaintiff.

The misinterpretations in excerpt form presented by Defendants were not posited as grounds for a motion until February 28, 2013, three business days before the first time a hearing was set. This was done while Defendants were resisting discovery.

Defendants now argue that these misinterpretations in excerpt form, which are clearly contradictory to their own witness' understanding and recollection of events, should be considered as a "binding judicial admission." Defendants cite no cases binding a party to a mischaracterization of an unsworn interrogatory answer which is not only readily susceptible to a very different meaning, but contrary to the other papers and evidence, including facts known to and admitted by the other party.

Judicial admissions are generally regarded as simply evidence which can be "used" in a second trial. Alex Sanders, Deborah Neese, and John S. Nichols, South Carolina Trial Handbook for South Carolina Lawyers §10:23 (p.10-19)(Law Co-op. 1996)("They are generally regarded as evidence of an admitted fact, so counsel should be careful in relying on them as excusing the need for other proof in the second trial").

Few, even when unambiguous, are regarded as binding or irrevocable, or as foreclosing introduction of other evidence. See, e.g., Rule 36(b), SCRPC, which relates to actual "admissions" made in response to a formal "request for admissions." It even allows a party to withdraw or amend such an actual admission under certain circumstances.

Defendants cite as their only authority, a 1967 case and a 1935 case decided before the 1986 adoption of the South Carolina Rules of Civil Procedure, and which do not involve peculiar twists of unsworn initial interrogatory answers or anything even similar.

The remaining arguments in Defendants' Reply are adequately addressed in Plaintiff's Brief in Opposition.

Defendants misapprehend and misstate the facts, extensively misapprehend the applicable law, and have certainly failed to demonstrate an absence of dispute as to the material facts. For these and all the other foregoing reasons, Defendant's motion for summary judgment must be denied.

Respectfully submitted,



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803-929-1484

ATTORNEY FOR PLAINTIFF
Coves Darden, LLC

DATE: 5-17-13

Supplementation/amendment to Plaintiff's response to interrogatories and requests for production, dated May 20, 2013

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Coves Darden, LLC,

Plaintiff,

v.

Francisco Jose Garcia Ibanez,
Dori Derr,
and Half Moon Stables, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

**SUPPLEMENTATION/AMENDMENT TO
PLAINTIFF'S RESPONSES TO
INTERROGATORIES AND REQUESTS FOR
PRODUCTION**

**TO: DEFENDANT AND TOM YOUNG, JR., ESQUIRE, ATTORNEY FOR
DEFENDANTS:**

Whereas, despite information already within Defendant Ibanez' own knowlege, as described by him under oath in his March, 2013 deposition, counsel for Defendants claim to understand Plaintiff's early response to an initial interrogatory differently than intended; and

Whereas, within approximately three business days of Defendants' first putting forth their claimed understanding of the response, that response was clarified by Plaintiff's counsel in open court as follows:

[I]f there is no written contract, there is a verbal contract where the parties fully understood the basis on which this man was going to work for them and even if one determined that the contract was an at-will relationship, the black letter law of South Carolina is that employment at-will is ... contractual.

(See Transcript of March 5, 2013 proceedings, p. 8, L9 to p. 9, L10); and

Whereas, the original interrogatory included inquiry about the identity of "all writings or communications memorializing said alleged oral agreement"; and the response disclosed at length various aspects of the agreement reached by the parties and the time period during which the agreement was reached; and

Whereas, even more recently, Plaintiff's counsel has clarified again in papers presented to Defendants' counsel:

To the contrary, Plaintiff contends that between December of 2010 and January of 2012, Plaintiff entered into an agreement for employment of Ibanez on certain terms, and that incident to applying for the visa which was part of those terms, the parties reduced the

common terms of the agreement to writing. The written document may or may not have been countersigned by Ibanez.

(Plaintiff's May 17, 2013 Surreply.); and

Whereas, Defendants' counsel may still contend, incorrectly, that Plaintiff intends to deny the existence of an oral agreement with Ibanez preceding the writing up of the common terms thereof;

Now, therefore:

Plaintiff amends the first three sentences of Plaintiff's October, 2012 response to interrogatory 6 to read:

Between December of 2010 and January of 2012, Plaintiff entered into an agreement for employment of Ibanez on certain terms, and incident to applying for the visa which was part of those terms, the parties reduced the common terms of the agreement to writing. The written document may or may not have been countersigned by Ibanez. Upon information and belief, based on statements of Ibanez' counsel in court on May 20, 2013, Ibanez denies the existence of a valid written contract. Upon information and belief, the written document was presented to and acknowledged by Ibanez in or before the time of his visa interview in February of 2012.


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ATTORNEY FOR PLAINTIFF
Coves Darden, LLC

DATE: 5-20-13

Defendant's motion to amend answer, dated May 22, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	CIVIL ACTION NO. 2012-CP-02-01772
	)	
Coves Darden, LLC,	)	
	)	
Plaintiff,	)	DEFENDANTS' MOTION TO
	)	AMEND ANSWER
v.	)	
	)	
Francisco Jose Garcia Ibañez,	)	
Dori Derr,	)	
and Half Moon Stables, LLC,	)	
	)	
Defendants.	)	
	)	

Defendants respectfully move the Court for an Order allowing them to Amend their Answer filed in the above captioned matter to assert a newly raised affirmative defense of Statute of Frauds. This Motion is brought pursuant to Rule 15(a)(2) of the South Carolina Rules of Civil Procedure. Specifically, Defendants seek leave to assert the following defense:

FIRST AFFIRMATIVE DEFENSE

To the extent that the Complaint seeks to impose liability on the basis of an oral agreement between Plaintiff and Defendant Jose Francisco Garcia Ibañez, Defendants assert that any such agreement is void and unenforceable as violating the Statute of Frauds.

Rule 15(a) provides the circumstances under which a pleading may be amended without leave of Court. It then continues:

“Otherwise, a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.”

Liberality in amendment of pleadings is important to insure that a party has a fair opportunity to present his defenses. *Freeman v Continental Gin Co.*, 381 F2d 459 (5th Cir.

1967). Additionally, Rule 15 codifies the liberal approach to amendment of pleadings to promote a policy of deciding cases on their merits, instead of on technicalities. *Phillips v Borough of Keyport*, 179 FRD 140 (D.C.N.J. 1998). The United States Supreme Court has held that leave to amend pleadings under Rule 15(a) should be freely given in the absence of any apparent reason, such as undue delay, bad faith, or dilatory motive on the part of the moving party, or undue prejudice to the opposing party by virtue of allowing the amendment. *Foman v Davis*, 371 US 178 (1962).

Judged by the foregoing standards, it is clear that the instant Motion should be granted. Plaintiff's Complaint alleged only that "Plaintiff entered into an agreement to employ Ibañez [to] act as an expert equestrian trainer, and to provide expert instruction and consultancy services in the equestrian arts for clients of Plaintiff." (Complaint, ¶ 7). Defendants' Answer denied the existence of a written contract of employment and alleged that "the terms of any alleged oral agreement were never negotiated between the parties." (Answer, ¶ 7).

Shortly after filing their Answer, Defendants sent interrogatories seeking, among other things, the terms and conditions of any alleged oral employment contract. Plaintiff's response to that interrogatory was "The agreement was not oral. It was a written contract presented to and acknowledged by Ibanez in (sic) or before January of 2012, after August of 2011." (Plaintiff's response to Interrogatory 6).

During his deposition Mr. Garcia was questioned about his conversations with Miguel Coves regarding the contemplated terms of employment. However, it was not until the filing of his Affidavit on April 24, 2013, that Mr. Coves first disclosed that the contract of employment may, indeed, have been oral, and that it contemplated a term of between two and three years.

(Coves Affidavit, ¶ 6). However, even then, Mr. Coves continued to assert the existence of a superseding written contract of employment. (Coves Affidavit, ¶ 33: "Ibañez breached his contract with us. He breached the written agreement which he knew existed").

As of this date, Plaintiff has not amended or withdrawn its admission that there is no oral contract, although Mr. Coves has only recently gone on record in an affidavit attesting to the terms of the alleged oral agreement, and the fact that its term was between two and three years. Defendants simply seek the opportunity to raise a legal defense to the enforcement of that alleged oral agreement.

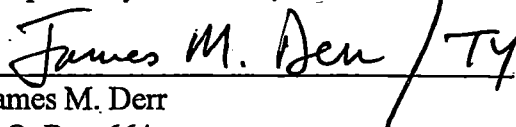
Defendants acknowledge that Rule 8 requires the statute of frauds to be pled affirmatively. However, at the time the Answer was filed there was no indication that Plaintiff intended to rely on an oral agreement, rather than a written one. That fact was certainly not disclosed in responses to interrogatories. Therefore, since Plaintiff now apparently intends to rely on an alleged oral agreement, Defendants simply seek the chance to challenge the enforceability of such an alleged agreement.

Courts liberally allow the assertion of a Rule 8 affirmative defense, either by way of a Rule 15(a) motion or in a summary judgment motion so long as there is no prejudice to Plaintiff. *Sylla v Massey-Ferguson, Inc.*, 595 F Supp 590 (E.D. Mich. 1984 (statute of limitations defense asserted in summary judgment motion); *Kessenich v Raynor*, 120 F Supp 2d 242 (E.D.N.Y. 2000) (Court considered statute of frauds defense not pled in answer); *Lafreniere Park Found. v Broussard*, 221 F3d 804 (5th Cir. 2000) (defense of *res judicata* asserted for first time during trial). The key factor in all of these cases seems to be the lack of prejudice to the plaintiff or unfair surprise. Neither is present in this case. Plaintiff has not, and cannot point to any unfair

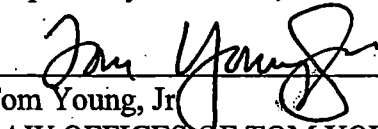
surprise or prejudice as a result of this Motion. In any event, Plaintiff bears the burden of demonstrating some prejudice that would result from the proposed amendment. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. ("The party opposing amendment bears the burden of showing prejudice.")).

For the foregoing reasons, and each of them, Defendants respectfully request that the Motion to Amend be granted.

Respectfully submitted,


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Respectfully submitted,


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Date: May 22, 2013

Aiken, South Carolina

Plaintiff's opposition to Defendants' Statute of Frauds argument raised for the first time at hearing, and to post-hearing submissions by Defendants, dated May 24, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

Coves Darden, LLC,)

Plaintiff,)

v.)

Francisco Jose Garcia Ibañez,)

Dori Derr,)

and Half Moon Stables, LLC,)

Defendants.)

**PLAINTIFF'S OPPOSITION TO DEFENDANTS'
STATUTE OF FRAUDS ARGUMENT RAISED
FOR THE FIRST TIME AT HEARING,
AND TO POST-HEARING
SUBMISSIONS BY DEFENDANTS**

Plaintiff reiterates its objection to the at-hearing and post-hearing argument and authority submitted by Defendants concerning the statute of frauds. It presents – or at least raises – further factual issues. Very limited discovery was conducted in this case. The issue was not raised in the pleadings. It was not raised in the motion. Defendants did not submit an affidavit on the issue. Plaintiff did not present an affidavit on the issue. The time for these submissions is closed.

As Plaintiff's counsel stated at the hearing, the statute of frauds argument is not properly before the court.

Summary judgment, on the bases it was eventually and finally moved for, should be denied without consideration of the issue.

Although after noting objection, Plaintiff's counsel responded to the argument on the statute of frauds extemporaneously at the hearing: the statute of frauds, which is an affirmative defense, Rule 8(c), SCRCF, was not pled as an affirmative defense; it was not listed as a ground

for summary judgment in any motion filed¹; it was not briefed; and Plaintiff was not given an opportunity to do discovery on it or research or brief it or file opposing materials on it. "The aim [of Rule 8(c)] is to avoid the 'surprise' defenses permissible under the old general denial answer, and require the defendant also to stick to 'fact' pleading." Rule 8(c), SCRCP, Reporter's Note.

Defendants' counsel states that Defendants had no inkling of an oral contract involving employment likely to be between two and three years, until reading the Coves affidavit submitted by Plaintiff around April 25, 2013. The affidavit was filed almost a month before the May 20, 2013 hearing. Rather than postpone the hearing or amend the motion, Defendants brought up the issue for the first time at hearing, and handed up prepared authorities.

Contrary to the indications of counsel both in the hearing and in their post-hearing letter to the Court, the Coves affidavit, although nearly a month prior, was not the first notice counsel had of an oral agreement for employment likely to last two or three years. Their own client recounted the oral agreement in which the employment was expected to last two or more years, in

¹Plaintiffs have noted repeatedly Defendants' lack of compliance with notice procedures which prevent summary judgment motions from being determined on the basis of artful surprise. Defendants twice filed a notice of motion for summary judgment which did not meet the requirements of Rule 7(b)(1) for a "motion," because it did not contain any statement of grounds whatsoever. With respect to the second filing, about three business days before the time set for hearing, Defendants filed a memorandum stating their grounds, and purported supporting materials which under Rule 6(d) should have been filed with the motion. Plaintiff did not receive ten days' notice of the actual time for hearing of the motion, cf. Dedes v. Strickland, 307 S.C. 152, 414 S.E.2d 132 (1992) (action taken on summary judgment motion void because of lack of 10 days' notice to nonmoving party of the actual date of hearing, so as to allow for orderly preparation and presentation of affidavits or other opposing materials), because no true motion existed until about 3 business days beforehand. The motion, for other reasons, was postponed. Plaintiff filed affidavits and other materials, based on the issues presented. Upon hearing, Defendants raised for the first time, at hearing, an additional ground which had never been part of their motion, nor a part of their pleadings, i.e., the statute of frauds.

his March 26, 2013 deposition, nearly two months in advance of the May 20 hearing. It is cited in Plaintiff's 50-page brief verbatim. For only a partial example:

10. Q: How did the discussions progress regarding the
11 prospect of employment?
12 A: I don't understand.
13 Q: Did you continue to entertain the possibility
14 of working for them?
15 A: Yes.
16 Q: Did you discuss any differences between the two
17 of you over the terms that would be acceptable?
18 A: No. We continue with the same agreement.
19 Q: Did you accept their proposed terms on that
20 visit?
21 A: Yes.
22 Q: So at this time, you reached an agreement in
23 which you would work for an expected length of
24 two years, which might possibly be extended?
25 A: Yes.

(Id., p. 38 (emphasis added).)

Reserving objection to any determination at all of the statute of frauds issue on summary judgment, after considering the authorities Defendants submit, Plaintiff concludes that the lack of a showing by Defendants and the presence of genuine issues as to material facts preclude any decision on summary judgment.

At the very best, Defendants have succeeded in showing that there are facts from which a jury could conclude there was a written contract, or an oral contract for a specified term, or an oral at-will contract. Since it is at least one of these, summary judgment must be denied. No one of these possibilities obviates the breach of contract claim, the breach of fiduciary duty claim, the tortious interference claim and the SCUTPA claim. So there is no basis for summary judgment.

On the particular moot subissue at hand, Defendants have made no showing of the absence of an issue of fact as to whether the oral agreement reached by the parties was "within"

the statute of frauds and not subject to any exception. It bears repeating that negating a possible statute of frauds defense is not an element of Plaintiff's case. The statute of frauds is an affirmative defense on which Defendants bear the burden of proof and which they have not pled and not included in their motion.

Absent a showing by Defendants by pointing to specific portions of the record in which information on an issue is sought, there is no duty of the nonmoving party to come forward with any materials. It is not sufficient for the moving party, without more, to issue a summary judgment incantation, and dare the nonmoving party to prove every conceivable element of the nonmoving party's case and disprove every possible defense including those not pled.

Rule 56(e), SCRPC, provides that an adverse party may not rest upon the mere allegations or denials of his pleadings to withstand summary judgment but must set forth specific facts showing there is a genuine issue for trial. As we have recently held, however, a moving party who fails to show the absence of a genuine issue of material fact is not entitled to summary judgment even though his adversary does not come forward with opposing materials. Standard Fire Insurance Co. v. Marine Contracting and Towing Co., 301 S.C. 481, 392 S.E.2d 460 (1990). The party opposing summary judgment need not come forward in any way if the moving party has not supported his motion to the point of showing the issue is a sham. Title Insurance Co. v. Christian, 267 S.C. 71, 226 S.E.2d 240 (1976).

Yarborough v. Rogers, 306 S.C. 260, 411 S.E.2d 424 (1991). See also Adickes v. S.H. Kress, 398 U.S. 144, 159-60 (1970) (discussing procedure under similar federal Rule 56, where moving party must first demonstrate absence of evidence by showing specific discovery passages where evidence was sought and determined to be nonexistent).

"It is well established that summary judgment is appropriate only when it is perfectly clear that no genuine issue of material fact exists and further inquiry into the facts is not desirable to clarify the application of the law." Rice v. The School District of Fairfield, 317 S.C. 87, 452

S.E.2d 352 (Ct.App. 1994) (citing Duck v. Wallace Assoc., Inc., 313 S.C. 448, 438 S.E.2d 269 (Ct.App. 1993)). "In determining whether triable issues of fact exist, all inferences from the facts in the record must viewed in the light most favorable to the party opposing the summary judgment motion." Rice (citing Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988)). "Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should not be granted." Rice (citing Hamilton v. Miller, 301 S.C. 45, 389 S.E.2d 652 (1990)).

Defendants' argument that the statute of frauds may summarily be decided to determine the entire outcome of this case rests on three authorities and a reference to the Coves affidavit. The authorities submitted by Defendants are the Restatement (2d) of Contracts §130, a 1900 case decided by the S.C. Supreme Court², and an unpublished 1991 opinion of the federal Fourth Circuit Court of Appeals applying S.C. law, and bearing a written warning that there may be a rule against citing the case as authority³. For present purposes, these cases simply stand for the proposition that there is a statute of frauds in South Carolina that applies to some employment agreements.

It must be initially emphasized that the "Statute of Frauds" is not designed to avert actions for fraud, based on the alleged fraud of the defendant. It is generally designed to avert actions alleging breach of contract by a defendant in which a plaintiff would have an opportunity to rely

²Mendelsohn v. Banov, 57 S.C. 147, 35 S.E. 499 (1900).

³Mahon v. Greenville Memorial Auditorium, No. 90-2438 (4th Cir. 1991) (unpublished) 1991 U.S. App. LEXIS 7881.

solely on his own false or fraudulent allegations of a promise by the defendant to perform an obligation in the future.

According to Black's Law Dictionary, "The Statute of Frauds"

-- is the common designation of a very celebrated English statute (29 Car. II, C. 3), passed in 1677, which has been adopted, in a more or less modified form, in nearly all of the United States. Its chief characteristic is the provision that no suit or action shall be maintained on certain classes of contracts or engagements unless there shall be a note or memorandum thereof in writing signed by the party to be charged or by his authorized agent. Its object was to close the door to the numerous frauds and perjuries. It is more fully named as the "statute of frauds and perjuries."

Id. at 595 (5th ed. 1979).

The provisions of a statute of frauds are designed to prevent frauds, but they are to be strictly construed to prevent them from operating as a protection to fraud. 72 Am.Jur.2d Statute of Frauds §172 (1974).

The pertinent portion of the South Carolina Statute of Frauds provides as follows:

Sec. 32-3-10. Agreements Required to Be in Writing and Signed

No action shall be brought whereby:

(5) To charge any person upon any agreement that is not to be performed within the space of one year from the making thereof; Unless the agreement upon which such action shall be brought ... shall be in writing and signed by the party to be charged therewith....

This is the English Statute of Frauds. Restatement (2d) Contracts §130 Official Comment a.

The provision is interpreted to cover "only those contracts whose performance cannot possibly be completed within a year." Id.

For example, "A orally promises to work for B, and B promises to employ A during A's life at a stated salary. The promises are not within the one-year provision of the Statute, since A's life may terminate within a year." Restatement (2d) Contracts §130 Official Illustration 2.

Let us hypothesize⁴ that, based on what can be read in Coves' affidavit, Ibañez' deposition, the papers initially submitted to the immigration authorities to apply for the O-1 visa (see, e.g., attachment to Def. Mot. S.J.), and the written document sent to the immigration authorities in response to their followup request (see same), that "Ibañez orally promises to work for Plaintiff, and Plaintiff promises to employ Ibañez during such period as is authorized by the United States Citizenship and Immigration Services, with a good faith effort of the parties to continue the employment for two or more years." Under the illustration, the promises are not within the one-year provision of the Statute, since USCIS may authorize a period shorter than a year.

In a case about 50 years after the South Carolina case cited by Defendants, the Court summarized South Carolina law thusly:

It is well settled that the statute applies only to an agreement which cannot be performed within a year. In Cline v. Southern Railway Co., 110 S.C. 534, 96 S.E. 532, 538, the Court quoted with approval the following from McPherson v. Cox, 96 U.S. 404, 416, 24 L.Ed. 746: 'In order to make a parol contract void it must be apparent that it was the understanding of the parties that it was not to be performed within a year from the time it was made.' In Weber v. Perry, 201 S.C. 8, 21 S.E.2d 193, 194, the Court said: 'There can be no dispute as to the well established principle that the statute applies only to those contracts which are impossible of performance within a year and that a contract on a contingency which may occur within the year need not be supported by a writing.' If there is a possibility of performance within a year, the agreement is not within the statute. The fact that performance within a year is highly improbable or not expected by the parties does not bring a contract within the scope of this clause. Accordingly, it has been held that a contract to employ another 'for an indefinite period [of time] so long as plaintiff's work was satisfactory' was not within the statute. Cline v. Southern Railway Co., supra, 110 S.C. 534, 96 S.E. 532. A similar conclusion has been reached as to an agreement which was construed by the Court as being one to 'employ the plaintiff for the

⁴The term "hypothesize" is used because Defendants do not adduce any sworn moving materials expressly asserting Ibañez did or didn't do anything. One could also "infer" from these sources.

rest of his natural life as long as he did his work in a satisfactory manner.' McGehee v. South Carolina Power Co., 187 S.C. 79, 196 S.E. 538, 541. Numerous other decisions of this Court illustrating the principles heretofore stated could be cited. There is an interesting review of the English cases in Warn v. Texas & P. R. Co., 164 U.S. 418, 17 S.Ct.147, 41 L.Ed. 495. Among them was one holding that an oral agreement by which the defendant promised, for one guinea paid, to pay the plaintiff so many at the day of his marriage was not within the statute, although the marriage did not take place within the year. The Court said that marriage might have happened within a year after the agreement. Another English case reviewed held that a promise to pay so much money upon the return of a certain ship, which ship happened not to return within two years after the promise made, was not within the statute, 'for that by possibility the ship might have returned within a year; and although by accident it happened not to return so soon, yet, they said, that clause of the statute extends only to such promises where, by the express appointment of the party, the thing is not to be performed within a year.' Anon., 1 Salk, 280.

Joseph v. Sears Roebuck & Co., 224 S.C. 105 at 111-112, 77 S.E.2d 583 at 586 (1953).

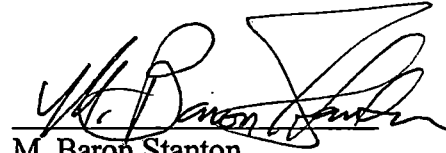
There is no evidence that the agreement was that the employment could under no circumstances be completed within a year.

There is evidence that the agreement was for "such period as is authorized by the United States Citizenship and Immigration Service." There is clear evidence in the record that the O-1 visa was expected to be two or three years, and that the visa would basically allow Ibañez to work only for Coves Darden, but that Coves Darden would not employ Ibañez "beyond his authorized period of stay." It was possible both that Ibañez' authorized period of stay could initially be much shorter, and that Ibañez' authorized period of stay could later be shortened.

Although the agreement and understanding was for the duration of the O-1 visa and a good faith effort to make it two or more years if the visa allowed, the grant of a shorter visa or an end to its validity for other reason would still have allowed the contract to have been performed.

For the foregoing reasons, the statute of frauds argument of Defendants should be disregarded, and summary judgment, denied.

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF
Coves Darden, LLC

DATE: 5-24-13

Deposition of Half Moon with Dori Derr as designated 30(b)(6) representative, taken on October 2, 2013, pp. 3-10 and 38-60

1 DORI DERR, having been duly sworn, deposes and
2 testifies as follows:

3 **MS. DERR - EXAMINATION BY MR. STANTON:**

4 Q: Good afternoon, Ms. Derr.

5 A: Good afternoon.

6 Q: In that you're sitting in the witness chair,
7 I'll assume, but I can ask counsel, that you're
8 one of the designated 30(b)(6) witnesses for
9 the deposition, or perhaps the only one.

10 MR. DERR: For the record she is the 30(b)(6)
11 designee.

12 MR. STANTON: Okay.

13 Q: We've met before. I'm Barry Stanton, otherwise
14 known as M. Baron Stanton, and I'm representing
15 the plaintiff. We're here for a deposition
16 pursuant to Rule 30(b)(6) of the South Carolina
17 Rules of Civil Procedure and it's a deposition
18 of Half Moon Stables, LLC, for which we sent a
19 notice back in -- on April 24th, 2013. It did
20 not go forward and by agreement we're going
21 forward today. Have you had an opportunity to
22 review that notice?

23 A: Yes.

24 Q: All right. And in that notice there's a list
25 of subjects -- subject matter, issues or



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1 questions upon which we wish to examine Half
2 Moon and under that rule, Half Moon is to
3 designate one or more witnesses who can testify
4 about what knowledge is available to Half Moon,
5 so without further ado I'm just going to jump
6 into those questions.

7 A: Sure.

8 Q: The first question or subject area is the date
9 on which the first contact was made with Miami
10 immigration counsel to explore engaging that
11 counsel to change the visa for Ibanez, whom
12 we've also referred to as Mr. Garcia. Do you
13 know that date?

14 A: Yes.

15 Q: What is it?

16 A: May 30th, 2012.

17 Q: Who made that contact?

18 MR. DERR: That's getting beyond the scope of what
19 you asked for. You asked for a date. We gave
20 you a date so there was a complete response to
21 that.

22 Q: Okay. Well, I'm going to ask you, if you know,
23 who made that contact.

24 MR. DERR: And I'm going to make the same objection.
25 You are entitled to ask questions with respect



1 to these specific areas that you identified.
2 You asked for a date. You were given a date.

3 **MR. STANTON:** And I'm asking about things that bear
4 on the date. I'm not limited to these
5 questions. Her obligation to respond with the
6 full knowledge of the organization may be
7 limited under the rule, but if she has personal
8 knowledge about something I'm entitled to ask
9 her in order to determine her competency and
10 credibility as a witness on this general
11 matter.

12 **Q:** So I'm asking you do you know who made that
13 contact?

14 **MR. DERR:** And I'm making the same objection.

15 **MR. STANTON:** All right.

16 **MR. DERR:** You asked -- wait. You asked for a date.
17 You were given a date. Now, you didn't say the
18 date on which contact was first made with Miami
19 immigration counsel and the circumstances
20 surrounding that. You asked for a very
21 specific thing. You asked for a date. You got
22 a date.

23 **MR. STANTON:** Fine. If she doesn't know, then
24 perhaps I can't hold her accountable for not
25 knowing or not having studied that. If she



1 does know she needs to answer the question, and
2 I'm going to insist on an answer.

3 **MR. DERR:** Well, then you're getting outside the
4 scope of 30(b)(6) and you're turning this into
5 a regular witness deposition and she's already
6 been deposed.

7 **MR. STANTON:** I'm asking the question and I'm
8 entitled to an answer. If you're going to
9 instruct her not to answer, we'll have to --
10 we'll have to take that up with the Court.

11 **MR. DERR:** Okay.

12 **MR. STANTON:** Okay. Are you instructing her not to
13 answer?

14 **MR. DERR:** Yes.

15 **MR. STANTON:** And for the record -- I mean, I don't
16 want to argue in advance an entire motion in
17 the course of a deposition transcript, Jim, but
18 the rule does not function that way. It's not
19 interpreted that way. Otherwise to take a
20 30(b)(6) deposition, someone would have to, in
21 advance, compose every single deposition
22 question that they intended to ask. The rule
23 calls for the subject matters or testimony of
24 the issues and there's no restriction in the
25 rule about asking the witness other things,



1 like who are you, where were you born. That's
2 perfectly fair game. It's also good and
3 perfectly fair game to ask the witness other
4 things bearing on the witness's preparation,
5 credibility and recollection. If you're going
6 to persist in the objection, I mean, I -- I
7 don't want to argue it with you here but ---

8 **MR. DERR:** And I don't want to argue with you
9 either. Obviously we both disagree over the
10 scope of a 30(b)(6) deposition, but you asked
11 for a date. You were given a date.

12 **MR. STANTON:** Okay. If ---

13 **MR. DERR:** She's testified fully with respect to
14 that.

15 **MR. STANTON:** Fine. I mean, if you want to make
16 this tedious, we can come back for three more
17 30(b)(6) depositions and we can go -- we can
18 argue about discovery for the next three years,
19 and if you want to just repeat the same thing,
20 we're going to have a very short deposition
21 here, but it's not -- but I'm not going to
22 consider it concluded so.

23 **Q:** On what records or recollection do you rely in
24 giving me the date May 30th, 2012 as the date
25 on which first contact was made with Miami



1 immigration counsel?

2 A: I reviewed the emails surrounding those
3 transactions and the date were registered on
4 the -- on those documents.

5 Q: What emails were those?

6 A: The emails to the immigration attorney.

7 Q: Who wrote the emails?

8 MR. DERR: If you know.

9 A: I believe you -- Jim Derr did.

10 Q: Do you know whether those emails have been
11 produced in the course of this litigation?

12 A: I don't know. I was only present at my own
13 deposition. They weren't produced during that
14 one. They were -- so I don't know, is the
15 answer.

16 Q: And you believe that May 30th, 2012 was indeed
17 the very first contact with that ---

18 A: I do, yes.

19 Q: Do you know how that particular counsel was
20 identified or selected for contact?

21 MR. DERR: Okay. Again, we're getting outside the
22 scope now in testing her recollection, so I'm
23 going to instruct her not to answer.

24 Q: The second general area of inquiry is the date
25 on which the engagement of that Miami



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1 immigration counsel was confirmed. Do you know
2 that date?

3 A: I do. It was the following day, May 31st, 2012.

4 Q: And on what do you base that knowledge?

5 A: Emails bearing the date.

6 Q: The same emails that you reviewed that
7 pertained to the previous area of inquiry?

8 A: Well, the response to -- that sequence of
9 emails.

10 Q: Did you write any of those emails?

11 A: I did not.

12 Q: Were those emails between Mr. Jim Derr and the
13 office of that lawyer?

14 A: Yes, sir.

15 Q: How do you know that no telephone calls
16 preceded the emails?

17 A: It's my recollection on this subject that they
18 were very hard to get a hold of by phone and
19 that was how we finally got through.

20 Q: So were there attempts to make contact before
21 May 30th, 2012?

22 A: That's my recollection. I would say in that
23 immediate area though. We didn't wait around
24 a lot.

25 Q: About how long before May 30th, 2012 were there



1 attempts to make contact?

2 A: Well, I'm going to be guessing. I'm going to
3 give you a range which is going to be just my
4 best recollection, because I really didn't
5 review this area according to what I understood
6 was going to be discussed today. But I would
7 say the -- the afternoon of maybe a day before
8 that and then a day in between and then May
9 30th we -- so -- all right. Going back, say
10 the afternoon of May 28th and very possibly May
11 29th, or I'm almost certain, and then May 30th
12 we finally did the ...

13 Q: The attorney is Antonia Canero. Does that
14 sound right?

15 A: Yes, sir.

16 Q: Is that a woman?

17 A: It is.

18 Q: Have you ever met Ms. Canero?

19 A: No, not personally, or in person.

20 Q: The next general area of inquiry listed as
21 number three on the deposition notice ---

22 A: Yes.

23 Q: --- is who gathered and who transmitted the
24 supporting documentation to Ms. Canero which
25 was used in the June 1st, 2012 application to



1 it with anybody that he wanted to and if it
2 wasn't clear to him or if anything wasn't clear
3 that, you know, to come back the next day and
4 we'd talk about it. And then everything was
5 fine and the next day he signed it. Actually
6 I think we even gave him the name of an
7 attorney to discuss it with. Jim found him an
8 attorney. I'm remembering this now. I don't
9 remember who the attorney was. I think it was
10 somebody in Augusta and he was a Spanish
11 speaking attorney. That's right. And asked
12 him to contact that person. Yes. I forgot
13 about that. That's true.

14 Q: Did you get any impression as to whether he --
15 whether he did consult with that attorney?

16 A: I don't remember. I don't remember if he did.
17 It all went very well, so there weren't any
18 questions.

19 Q: And as you already said, no revisions to the
20 written document?

21 A: No.

22 Q: Correct?

23 A: Yes. Correct.

24 Q: Moving to the -- this sixth numbered item for
25 -- as a topic of questions, I'll just read it.



1 What clinics Ibanez conducted off the premises
2 of Half Moon and how much of the money received
3 from the students or the sponsor or host was
4 remitted to Half Moon or logged as counting
5 toward the monthly or annual goal or minimum
6 stated in the August 1st, 2012 contract? What
7 can you tell me about that?

8 A: Well, to break it into two parts, the two
9 clinics that he did off premises were Chicago
10 and -- Chicago, Illinois and Mullet Hall -- M-
11 U-L-L-E-T -- Hall, South Carolina. And part
12 two, with regard to the financial, Half Moon
13 didn't get anything. We didn't ask for
14 anything and zero.

15 Q: So one of the two clinics that he did off the
16 premises of Half Moon was at Mullet Hall, South
17 Carolina?

18 A: Yes.

19 Q: Where is that?

20 A: Past Charleston.

21 Q: Headed in what direction?

22 A: Headed south towards Georgia. Towards Georgia.
23 I didn't go so I can't give you -- I know
24 generally where they went.

25 Q: And Mullet Hall, that's not the name of a town



1 but the name of someone's premises?

2 A: I think it's the name of an equestrian center.
3 I had absolutely nothing to do with that, so
4 I'm a little bit guessing there. I know it's
5 an equestrian community. It could be the name
6 of the whole community. People who live there
7 have horses and they share a common barn, or it
8 could be just the name of the barn itself.

9 Q: Do you know -- just your impression -- I won't
10 hold you to precision -- the nearest town to
11 there?

12 MR. DERR: And again, this -- with the understanding
13 that she's now answered the question and you're
14 going to be asking her these following
15 questions on personal knowledge; correct?

16 MR. STANTON: On personal knowledge if she has it.

17 A: I didn't go and I don't have any personal
18 knowledge. The only -- I know it's circa
19 Charleston.

20 Q: Just to be clear I wasn't asking whether you
21 went. I only asked if you knew anything about
22 this Mullet Hall place or what it might be
23 closest to in terms of ---

24 A: That's why I don't know because I didn't go,
25 but I do know that it was in the Charleston



1 area.

2 Q: Do you know the names of any of the people who
3 are the principals of that organization or
4 whatever that thing is?

5 A: Dennis -- oh, god, what's his last name? It's
6 an older retired doctor who had come to one of
7 our clinics at Half Moon who set it up and I --
8 I can't remember his last name. I've only met
9 him a couple of times. I can't remember his
10 last name. I know his first name is Dennis.

11 Q: And then you said the other clinic that was
12 conducted off the premises of Half Moon was in
13 Chicago, Illinois?

14 A: Yes.

15 Q: Do you know any more about where, what part of
16 Chicago or who did it or what it was called?

17 A: I know even less about that one. That was --
18 we met these people who ran that equestrian
19 center at a breed show in Lexington, Virginia,
20 and they all spoke Spanish. I understood not
21 a word of it and I didn't set it up. I believe
22 it was -- I know they drove about a half an
23 hour from the airport to wherever it was.
24 That's the only discussion I had about it, and
25 the weather was bad.



1 Q: Who drove where? Where was this ---

2 A: When he went -- whenever he went to Chicago, he
3 landed at the airport in Chicago and they
4 picked him up there and he said they drove for
5 about a half an hour out to the center, so
6 that's how far away it was from the airport.
7 That's all I know about that place.

8 Q: And you didn't accompany him on that, so this
9 was just your hearsay from him about what his
10 experience was?

11 A: Yes.

12 Q: And you got the impression that he had about a
13 half hour ride from the airport?

14 A: Yes.

15 Q: O'Hare?

16 A: Yes.

17 Q: Did you get any impression of either what the
18 clinic was called, what the event was called or
19 anything -- any place names?

20 A: Huh-uh.

21 Q: The equestrian center or somebody's farm or
22 anything like that?

23 A: No.

24 Q: Okay. And then you said that as of -- with
25 respect to those two clinics, Half Moon did not



1 get anything from those clinics, namely no
2 money?

3 A: No money.

4 Q: Now, you weren't present for Mr. Ibanez's
5 deposition, were you? You weren't -- I don't
6 believe you were present, were you?

7 A: Part of it.

8 Q: You were? And it's been transcribed. Have you
9 ever had a chance to look at any of it?

10 A: No.

11 Q: Are you aware of his having described other off
12 premises events or clinics that he conducted?

13 A: No.

14 Q: North Carolina?

15 A: No.

16 Q: And I'm going from memory here. A couple or
17 three other places? Florida maybe?

18 A: No. He's never been to Florida while he's been
19 with us.

20 Q: So you're not aware of any off premises clinics
21 or other events that he has conducted, you
22 know, that are non-Half Moon events?

23 A: No.

24 Q: Other than the two that you mentioned?

25 A: No.



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1 Q: All right. And regardless of whether Half Moon
2 got any money, did Half Moon have any knowledge
3 about any money, namely does Half Moon have any
4 knowledge about what Mr. Ibanez received either
5 from the students or the sponsor or the host in
6 any -- in either of those two clinics?

7 MR. DERR: And again, now, you ask that in terms of
8 Half Moon's knowledge ---

9 MR. STANTON: Right.

10 MR. DERR: --- which is beyond the scope of the
11 designation. If you are wanting to take her
12 testimony -- no, you didn't ask how much was
13 received. You asked how much was credited and
14 the answer you already got was zero. If you
15 want to ask her her own personal knowledge
16 about any of that, I have no problem with it.

17 MR. STANTON: Ultimately I'm going to want to know
18 what her knowledge is anyway, Jim, but the --
19 the subject matter is described not in how much
20 money was received by Half Moon, but how much
21 of the money received from the students or the
22 sponsor or host was -- was remitted or logged
23 as counting toward the monthly or annual goal
24 or minimum stated in the August 1st, 2012
25 contract. So in other words ---



1 MR. DERR: And she already answered that without
2 objection and said zero.

3 MR. STANTON: She said they didn't receive any. How
4 much of it was logged or acknowledged is what
5 I'm asking.

6 Q: Regardless or whether you received it, did Half
7 Moon have any records or receive any
8 information saying here's how much money Mr.
9 Ibanez made at this thing? And regardless of
10 whether the money was paid to Half Moon, did he
11 come back and say I made this much? Did he
12 come back and give you a report saying here's
13 some of my outside earnings for your
14 information? That's what I'm asking. Is there
15 any knowledge either of you or Half Moon of how
16 much money he made from those events?

17 A: No.

18 Q: Just to be thorough, I assume the answer would
19 have to be that nor do you have any knowledge
20 of money he made from any events other than
21 those because you're not aware of any other
22 events.

23 A: Do -- no. Yes. Yes, I'm not aware of any
24 other and no, I don't know about his financial
25 arrangements for clinics. We don't get any



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1 money. Half Moon does not get any of that
2 money. That is all for Francisco. It's his
3 work and he gets paid for it.

4 Q: I'm going to show you the contract that we've
5 talked about a little today, the one dated
6 August the 1st, 2012.

7 A: Yes.

8 Q: And I may or may not mark it as an exhibit, or
9 your counsel may want to and I don't mind. But
10 I'll tell you it's got a control number on it
11 that says Half Moon Stables 000094 and then
12 that runs seriatim up to number ending in 98.

13 MR. YOUNG: Let me ask you this: Do you have a
14 number of exhibits you want to show her?

15 MR. STANTON: Pardon?

16 MR. YOUNG: Do you have a number of exhibits that
17 you want to show her today?

18 MR. STANTON: Not necessarily.

19 MR. YOUNG: The reason I ask is the rule, you know,
20 will let us talk to her about these exhibits if
21 they were not designated at least two business
22 days ahead of the deposition, so what I think
23 we would request at this time is the
24 opportunity to take the exhibit and meet with
25 her and then resume the deposition, so rather



1 A: Yes, sir.

2 Q: And that is the August 1st, 2012 contract we
3 were talking about?

4 A: Yes, sir.

5 Q: And it's rendered in English and Spanish?

6 A: Yes, sir.

7 Q: And when you left the room, did you have an
8 opportunity to look over it and confer with
9 your counsel about any aspects of it that you
10 needed to?

11 A: Yes, sir.

12 Q: The -- having looked at it, and I can certainly
13 hand it to you if you want to look at it while
14 I'm talking to you, does the Spanish part of
15 that -- does the Spanish translation of that
16 appear to you to have come primarily from
17 Google Translate or from other translational
18 assistance?

19 A: Jim Derr put -- did this part of it so I -- you
20 know, he -- he would know that better than I
21 would. I wouldn't -- I wouldn't know what all
22 he used, what tools he used. There may be some
23 legal fields too that he could tap into.

24 Q: Okay. And could you turn to the -- and most of
25 my reference will be to the first couple of



1 pages which are the English version.

2 A: Right.

3 Q: Would you turn to the heading that pertains to
4 compensation? I believe it's the top of the
5 second page.

6 A: Yes, sir.

7 Q: Could you read the -- just read for the record
8 the paragraph that pertains to compensation?
9 It's rather lengthy.

10 A: Okay. Half Moon shall pay Mr. Garcia at a
11 salary of \$3,000 per month subject to required
12 withholding, taxes and other required
13 deductions. In addition, should Mr. Garcia
14 fail to earn 3,000 euros per month from all
15 sources, Half Moon will pay the difference to
16 Mr. Garcia. Half Moon and Mr. Garcia may
17 mutually agree to adjust the salary of Mr.
18 Garcia during the time of this contract, but in
19 no event shall he be paid less than the salary
20 set out herein. Any adjustments in the salary
21 made during the term of this contract shall be
22 in the form of an amendment and will become
23 part of this contract, but it shall not be
24 deemed that Half Moon and Mr. Garcia have
25 entered into a new contract or that the



1 termination date of the existing contract has
2 been extended. This compensation will be
3 reviewed on a cost-of-living basis on each
4 anniversary of the execution of this agreement.
5 Any money earned by Mr. Garcia from other
6 clinics, exhibits and other activities outside
7 of his normal duties with Half Moon shall be
8 his own separate property and Half Moon shall
9 have no claim to said income. Payment of taxes
10 from said income shall be the responsibility of
11 Mr. Garcia.

12 Q: All right. With respect to that paragraph and
13 the stated obligation of Half Moon to pay the
14 difference to Mr. Garcia of anything that he
15 earns short of 3,000 euros a month ---

16 A: Yes.

17 Q: --- how did you -- how did Half Moon keep up
18 with the amount of Mr. Garcia's income from
19 other sources?

20 A: He would tell us if he hadn't made it and we
21 would bring up the difference. That only
22 happened on a couple of occasions.

23 Q: And although the current -- the exchange rates
24 tend to fluctuate with time, for some time now
25 the euro has been worth a little more than a



1 dollar; is that correct?

2 A: For a long time it has been.

3 Q: So the main point is with respect to that
4 contract, it talks of the base pay to Mr.
5 Garcia is \$3,000 a month in U.S. dollars, but
6 that he was assured a minimum of 3,000 euros
7 from all sources; right?

8 A: Yes.

9 Q: And so you're saying that there were only
10 isolated incidents where he didn't make at
11 least 3,000 euros from all sources.

12 A: Correct.

13 Q: All right. And if he didn't he would tell you.

14 A: Uh-huh. Yes.

15 Q: And that only occurred once or twice.

16 A: It was in the early months before he had an
17 opportunity to get very well established so, I
18 mean, it may have been as many as three. I'm
19 guessing. But it wasn't a sustained period of
20 time.

21 Q: So when that occurred, did he need to present
22 you with any records saying, you know, I know
23 you've paid me a certain amount in dollars and
24 here are my records of other money I've made
25 from other sources, but when you add them



1 together I still fell short of this target for
2 total euros? I think I asked that in the form
3 of a question, the question being did he
4 present you with any records when you would
5 have those discussions?

6 A: He kept track of it. Lessons and various other
7 forms of income that he had, he would write
8 them down as they occurred and I don't think we
9 ever asked him to present it to us. He would
10 just tell us what the difference was. We
11 basically -- I mean, I'm there every day. I
12 know, you know, I knew he -- he wasn't sending
13 it to a Swiss bank account. He -- you know, it
14 was -- it was slow in the -- and it still isn't
15 great but it's -- it's puffing along.

16 Q: So when -- when he did tell you that he wanted
17 more money to make up what I'll call the
18 shortfall ---

19 A: Right.

20 Q: --- from the target or minimum or what have you
21 ---

22 A: 3,000 euros.

23 Q: Right. He wouldn't present you with any -- any
24 records to show what he made and what he -- and
25 what he didn't make?



1 A: Well, if you want to call it a record. He has
2 a -- it is a record in -- in the tack room. He
3 would just show me, okay, these are the lessons
4 that I had and this is the income that I
5 brought in this month and, you know, this is
6 how short I am, and I would say okay. I mean,
7 I didn't photostat it and take a record of it
8 or anything. It was -- you know, it's just
9 really our agreement as part of the contract.
10 We just paid him.

11 Q: So he would show you but you would not retain
12 a record ---

13 A: No, I didn't retain ---

14 Q: --- as a business record?

15 A: --- a record of it. It's -- I mean, it's
16 really -- it wasn't necessary. I knew what was
17 going on. I was there every day and this is a
18 very personal thing. This is -- you know, it
19 is a business but it's -- you know, he's a --
20 he's my trainer. Our reasons for having him
21 there are above and beyond, you know, nickels
22 and dimes or, you know, we knew -- we knew we
23 weren't going to -- he wasn't going to make
24 that money in the beginning. You know, we knew
25 he wouldn't be that successful. He's not known



1 here. He's a big name in Spain but Aiken is
2 full of people who are trying to reinvent
3 themselves in the horse business and people are
4 very suspicious of it so, I mean, it's hard for
5 anybody to break into this business here.

6 Q: So you're saying you -- you knew there was a
7 likelihood he wouldn't make the 3,000 euro
8 target, at least at the beginning?

9 A: Yeah.

10 Q: Did his compensation, in fact, change from
11 those figures, the \$3,000 or the 3,000 euro
12 target? Did -- did those change?

13 A: I don't know if I understand what you mean.

14 Q: Is that still the contract ---

15 A: Yes.

16 Q: --- or have you -- or have you changed or
17 adjusted the agreed compensation and manner of
18 compensation of Mr. Garcia Ibanez?

19 A: This is still the terms -- the same terms and
20 conditions.

21 Q: So you still owe him monthly \$3,000 as a base
22 pay?

23 A: 3,000 euros as a base pay if he doesn't earn
24 them on his own.

25 Q: Right. So you owe him at minimum \$3,000?



1 A: Yes, that's correct.

2 Q: Right. And you also owe it to him to assure
3 that he gets at least the equivalent of 3,000
4 euros.

5 A: Correct.

6 Q: And you do not possess and have not retained
7 any records that show what he has made from
8 other sources?

9 A: No.

10 Q: The language of that contract, it was the
11 provision you read a minute ago, I think it
12 referred to money earned from clinics or
13 exhibits or other activities. I think that was
14 the approximate language.

15 A: Yes. Clinics, exhibits or activities outside
16 of his normal duties with Half Moon.

17 Q: And earlier I asked you about any clinics or
18 other things he did off premises. We discussed
19 the two clinics, the one in Chicago and the one
20 at Mullet Hall, South Carolina.

21 A: Yes.

22 Q: I want to make sure I'm comprehensive with my
23 question. Are you aware of anything --
24 regardless of whether they're called clinics,
25 are you aware of any other outside -- excuse me



1 -- any other activities outside his normal
2 duties whether they be called clinics, lessons,
3 exhibits or anything else from which he's made
4 any outside money?

5 A: Lessons, and he has recently shown a couple of
6 horses for people who -- and I don't know what
7 they pay him. I know he gets paid.

8 Q: But your answer still holds that as to any
9 outside -- or excuse me -- any other sources of
10 income regardless of how they're denominated --
11 -

12 A: Uh-huh.

13 Q: --- you don't -- you neither have nor have ever
14 obtained retained any records of what he's
15 made.

16 A: No, we have not.

17 Q: Not from lessons, not from showing for other
18 people ---

19 A: No. No, we don't have a slice of that so.

20 Q: Let me make sure that you understand the
21 question. I think we were good there until you
22 said that. I'm not asking if you have a slice
23 of it. I'm asking if you have a record of it.

24 A: No, I have no record of it. I don't.

25 Q: Okay. Do you know of any incidents where he



1 conducts lessons off the premises of Half Moon?

2 A: I know he doesn't conduct lessons off Half
3 Moon. He turns that down.

4 Q: Therefore any lessons that he does conduct are
5 on the premises of Half Moon; correct?

6 A: That's right.

7 Q: But he is allowed to do some of that on the
8 side outside of his regular duties?

9 A: He's allowed to.

10 Q: And he does do that occasionally?

11 A: He doesn't elect to.

12 Q: He does not have -- he does not have any
13 lessons -- does not conduct any lessons either
14 on or off premises?

15 A: No, he conducts lessons at Half Moon.

16 Q: Okay.

17 A: At Half Moon. He might go out and see a horse
18 for somebody, watch somebody ride once at their
19 property if conditions are just not suitable,
20 but he doesn't travel to other barns to give
21 lessons. He doesn't have the time to -- to do
22 it.

23 Q: Right. And when he provides the lessons at
24 Half Moon, is that for his own account?

25 A: Yes.



1 Q: And all you know about what he charges or
2 receives is what he mentions to you if and when
3 he mentions it to you in connection with
4 getting further compensation?

5 A: Yes.

6 Q: And then when he shows for other people, that
7 would be like entering into an event, a horse
8 show, and going and ---

9 A: Yes.

10 Q: --- riding the -- or exhibiting the other
11 person's horse?

12 A: Competition.

13 Q: And ordinarily he would get paid by the other
14 person for that?

15 A: It's my understanding he is paid, yes.

16 Q: But no records of that are presented to you
17 again unless he just happens to show you
18 something; right?

19 A: No records are presented to us.

20 Q: Okay. Do you know of any particular instances
21 where he has shown horses for other people?

22 A: Yes.

23 Q: Who has he shown horses for?

24 A: Lee Burton.

25 Q: Who else?



- 1 A: Irene Schoen -- S-C-H-O-E-N. She has another
2 name but I can't remember it. Berzak, I think.
3 B-E-R-Z-A-K. Something like that. I think
4 those are the only -- and myself. He's shown
5 my horses. That's it.
- 6 Q: When he shows yours that's pretty much Half
7 Moon business though; correct?
- 8 A: That's Half Moon. Yes.
- 9 Q: All right. So where did he show Ms. Burton's
10 horse?
- 11 A: Aiken, Tryon, Atlanta, Camden. I think that's
12 it.
- 13 Q: And where is Ms. Burton based?
- 14 A: St. Simons Island, Georgia.
- 15 Q: And where is her horse based?
- 16 A: On and off at Half Moon.
- 17 Q: Is it primarily one horse?
- 18 A: It is right now. She had another horse but
19 it's -- she's not competing it anymore.
- 20 Q: Is it a PRE?
- 21 A: Yes.
- 22 Q: What is its name?
- 23 A: Enebro -- E-N-E-B-R-O.
- 24 Q: I was a little slow.
- 25 A: E-N-E-B-R-O -- and I don't know the Roman



1 numeral.

2 Q: Same questions as to Ms. Schoen or Berzak.
3 Where has he shown for her?

4 A: He only showed that horse once in Aiken.

5 Q: And where is she based?

6 A: New York City.

7 Q: And where is her horse based?

8 A: Half Moon.

9 Q: One horse or more?

10 A: One.

11 Q: What's its name?

12 A: Lapiero -- L-A-P-I-E-R-O. Roman numeral
13 unknown.

14 Q: Okay. Who is Half Moon's accountant?

15 A: Half Moon's accountant is Johnson Smith and
16 Associates -- all caps -- PLCC.

17 Q: Where is that?

18 MR. DERR: Again I'll let her answer. She's
19 answered the question that was in the scope of
20 the designation. You can ask her about her
21 personal knowledge.

22 MR. STANTON: Okay.

23 A: I just heard that today. It's -- it's not
24 Texas because that's where I thought it was,
25 but it's somewhere out west. We can provide



Plaintiff's status report for status conference (with draft proposed scheduling order), dated
October 8, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

Coves Darden, LLC,)

Plaintiff,)

v.)

Francisco Jose Garcia Ibañez,)

Dori Derr,)

and Half Moon Stables, LLC,)

Defendants.)

**PLAINTIFF'S STATUS REPORT
FOR STATUS CONFERENCE
(WITH DRAFT
PROPOSED SCHEDULING ORDER)**

In anticipation of the status conference, October 15, 2013, Plaintiff respectfully submits this status report and draft proposed scheduling order.

Nature of the Case, and Circumstances of the Parties, Witnesses, and Counsel

This is a multi-party case arising from a special employment relationship with a foreign national in the business of breeding, training, showing, and selling an unusual breed of horse, and related equestrian activities.

The case involves allegations of breach of contract, breach of fiduciary duty, and business torts against Plaintiff's former employee (Ibanez), and persons now employing him (Derr and Half Moon).

The breed of horses involved ("P.R.E.") is from Spain. The principals of Plaintiff (Coves and Darden) have interests in Spain. One of the principals (Coves) speaks primarily Spanish.

The former employee, who is one of the defendants (Ibanez), also speaks primarily Spanish. There are expected witnesses who do not live in South Carolina (Liberatore, Alfredo, et al.). Some of the witnesses in the case require translation assistance (e.g., Ibanez, Bonilla).

The defendants' local counsel (Young) is a legislator. The defendants' other counsel (Derr), who is the husband of one defendant, is not licensed in South Carolina, has been admitted pro hac vice, and practices in the Virgin Islands.

Plaintiff's undersigned counsel (Stanton) lives in Columbia. As discussed briefly further herein, the undersigned has experienced an unexpected series of events during the year. The undersigned needs and requests further time for discovery and other trial preparation following the further hearing of the defendants' previous motion for summary judgment.

Progress of the Case

The case has been diligently pursued, and diligently defended from the beginning. Fairly early on, the defendants indicated an intention to seek summary judgment on one or more parts of the case. Defendants eventually filed papers outlining their grounds and arguments. The grounds, arguments, and opposition have continued to develop in court filings, as well as in one or more partial hearings.

Discovery has been tedious. Plaintiff filed one or more motions to compel. In those filings, difficulties with scheduling depositions are recounted. Scheduling also required scheduling an interpreter. The parties have also exchanged various paper discovery. The defendants filed one or more motions for protective order. In essence, the defendants contended that discovery should not progress beyond a certain point before summary judgment was determined. Plaintiff contended that summary judgment should not be determined until discovery progressed to a certain point.

In July, the Court advised through e-mail of its judicial clerk (Mr. Ness), that the Court decided to hold its ruling in abeyance on the defendants' summary judgment motion. The Court

advised through this e-mail that the parties had 90 days to do additional discovery. Of necessity, discovery has focused primarily upon matters relative to anticipated summary judgment arguments. The summary judgment motion is currently scheduled for further hearing on October 15, 2013, at which time a status conference is also scheduled.

Additional Considerations

Submitted herewith is a proposal scheduling order. Undersigned counsel needs more time after the summary judgment hearing to complete discovery and other trial preparation.

In addition to the above-recounted factors which have slowed the progress of the case, undersigned Plaintiff's counsel experienced a number of extended absences of his assistant during the year. These were because of an out-of-state family terminal illness. This slowed advancement of numerous administrative matters in the office. Unexpectedly, undersigned counsel's assistant then had a further change of family circumstances which required her to move from the state.

Undersigned counsel also unexpectedly began to suffer a recurrence, on a worse level, of nerve issues in his neck. These result in radiating nerve pain and numbness in the arms and hands. This was accompanied by possible epicondylitis (tennis elbow) and carpal tunnel issues whose diagnosis awaits first dealing with the neck issue.

These problems also translate into loss of sleep and increased fatigue. The compound difficulty presented is that, the more focused the office work, or desk work, or computer work that one does to compensate for the absence of the assistant, the worse the nerve problem gets. Extended writing or typing makes right arm and hand issues worse. (To the point of pain picking

up a coffee pot.) The less the focused desk work, paper work, and computer work, the more mitigated the nerve problem becomes, and the easier to cope with.

The neurosurgeon has prescribed a combination of medications and injections (with epidural) and a course of physical therapy which, almost laughably, will require more time out of the office each week, for a few weeks. The undersigned is currently trying to get these things scheduled. As is often the case, Plaintiff's counsel also has other cases which are running under scheduling orders, and will require careful scheduling and calendaring, so as not to encumber the court system or make counsel's schedule impossible.

On September 27, 2013, the undersigned also learned that his accountant had died, thus requiring alternative arrangements for various extended tax filings coming due.

Plaintiff has not completed discovery. Some of the discovery has recently been translated into Spanish and has been re-served on the defendants. Some of the discovery propounded has not yet been responded to as of this writing. Plaintiff recently noticed additional depositions for October 29, 2013, which can be rescheduled depending on the leeway afforded to counsel. One of the witnesses may require a translator to be scheduled. One of the witnesses previously evaded service of subpoena. One of the other witnesses previously ignored a subpoena and did not show up for her deposition.

The case has not yet before been called up for trial or appeared on a roster. It recently first appeared on a roster, before the summary judgment motion was scheduled for further hearing.

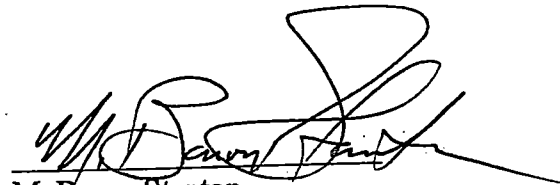
The case has not been mediated. The undersigned does not take a strong position in support or opposition to mediation, and is informed the case is not subject to mandatory ADR.

In lieu of a separate affidavit, undersigned counsel, by his signature below, hereby affirms the truth of the matters herein, excepting any generalizations or characterizations, or matters stated upon general recollection and as to those matters, he affirms that they are his impressions and beliefs.

The undersigned certifies that he consulted with opposing counsel on the subject of the proposed scheduling order but was unable to develop a consensus.¹

The undersigned suggests, and respectfully requests, a trial date of not before February 3, 2014, a provision that discovery may continue until January 15, 2014, and a provision that this case will have a date certain for trial. The date certain could be determined now or at a later point.

Respectfully submitted,



M. Baron Stanton
STANTON LAW OFFICES, P.A.
1728 Main Street
P.O. Box 245
Columbia, South Carolina 29202
803-929-1484

ATTORNEY FOR PLAINTIFF
Coves Darden, LLC

DATE: Oct. 8, 2013

¹The undersigned therefore has included more detail than usual in the status report. Nevertheless, other pertinent detail has been omitted, including family schedules, protracted terminal illness of family dog, veterinary and doctor's appointments, personnel matters, and schedules in other cases.

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

Coves Darden, LLC,)
)
Plaintiff,)

SCHEDULING ORDER

v.)

Francisco Jose Garcia Ibañez,)
Dori Derr,)
and Half Moon Stables, LLC,)
)
Defendants.)

Upon considering the status of the matter in conference with the parties, the Court hereby issues the following Scheduling Order in this matter:

Discovery shall be completed by January 15, 2014.

Mediation, if desired by the parties, shall take place before January 31, 2014.

This matter shall be subject to being called for a date certain trial on or after February 3, 2014.

IT IS SO ORDERED

This _____ day of _____, 2013.

Doyet A. Early, III
Chief Judge for Administrative Purposes
Aiken County Court of Common Pleas,
Second Judicial Circuit

Supplementation to Plaintiff's response to interrogatories, dated October 9, 2013

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Coves Darden, LLC,

Plaintiff,

Francisco Jose Garcia Ibañez,
Dori Derr,
and Half Moon Stables, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

**SUPPLEMENTATION TO
PLAINTIFF'S RESPONSES TO
INTERROGATORIES**

**TO: DEFENDANTS AND TOM YOUNG, JR., ESQUIRE, ATTORNEY FOR
DEFENDANTS:**

Plaintiff supplements responses to Defendant's August 27, 2012 interrogatories (and any other applicable interrogatories) as follows.

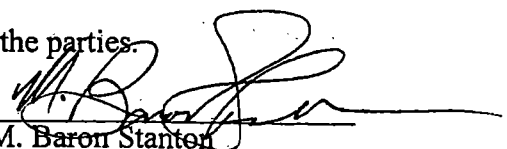
1. To the extent responsive to any interrogatory propounded, Plaintiff supplements its responses as follows:

In addition to the subjects in his affidavit on file, Michael J. ("Mike") Liberatore (immigration lawyer in Miami), 1000 Brickell Avenue, Suite 400, Miami, Florida 33131, Tel (305) 374-0306, Fax (786) 272-0652, may testify that a nonimmigrant visa such as the one at issue here is always subject to being granted for a shorter time than requested and a shorter time than is typical or authorized and that in fact, this does occur, and may result in grants of periods for shorter than one year; further, that he always bears this in mind in assisting clients, and did in the instant matter, in explaining the agreement of the parties.

2. To the extent responsive to interrogatory 6 or any other interrogatory propounded, Plaintiff supplements its responses as follows:

In addition to the subjects in his affidavit on file, Miguel Coves may testify that the length of the initial term of the special employment contract was for whatever initial duration the O-1 visa was granted and remained in good standing. This was agreed to be up to three years if also supported by a leave of absence from Ibanez's previous job, and could also end earlier with expiration or earlier termination of the O-1 visa, and would also probably be extended if the

situation was agreeable and if the authorized stay under the visa could be extended; the parties also contemplated and expected, but could not be certain, that the initial term would be two or three years, based on the usual attributes of an O-1 visa, Ibanez's leave of absence from his previous job, and the stated desires and agreement of the parties.


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803-929-1484

ATTORNEY FOR PLAINTIFF
Coves Darden, LLC

DATE: 10-9-13

Coves Darden's motion to compel Defendant Ibañez to answer interrogatories and respond to request for production, dated November 26, 2013 (with attachment of Plaintiff's interrogatories to Defendant Ibañez dated September 27, 2013 and Plaintiff's second request for production to Defendant Garcia y Ibañez dated October 7, 2013)

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

Coves Darden, LLC,)

Plaintiff,)

v.)

Francisco Jose Garcia Ibañez,)

Dori Derr,)

and Half Moon Stables, LLC,)

Defendants.)

**PLAINTIFF'S
MOTION TO COMPEL
DEFENDANT IBANEZ TO ANSWER
INTERROGATORIES
AND RESPOND TO
REQUESTS FOR PRODUCTION
(And Certification re Consultation)**

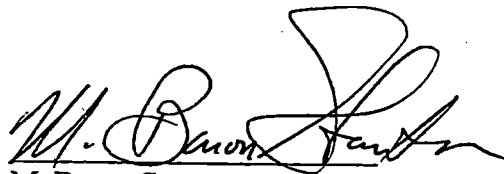
Plaintiff hereby moves the court pursuant to Rule 37, SCRCF, for an order compelling defendant Ibanez to answer interrogatories dated September 4 and September 27, 2013, and to respond to requests for production dated September 4 and October 7, 2013.

The grounds for this motion are: that the subject discovery requests were served on September 4, 2013; that subsequently, defendants' counsel requested that the discovery requests be translated into Spanish; that on September 27, 2013, translated interrogatories, accompanied by an additional set in English, were served; that on October 7, 2013, translated requests for production, accompanied by an English version were served; and that no answer or response of any kind has been served by this defendant within the time set by rule for response or any applicable extension.

Copies of these discovery requests, with their respective certificates of service are attached hereto. Also attached are marked and partially redacted excerpts of the responses of other defendants to requests for production, indicating Ibanez's involvement in money-making activities, for which he should have responsive records.

This information is relevant, among other things, to defendants Derr and Half Moon offering to facilitate violations of the U.S. immigration and nationality laws as a means or method of interfering with Ibanez's relationship with Plaintiff, and to the impact, and effect on trade or commerce, of the unfair competition alleged in this case.

The undersigned hereby certifies pursuant to Rule 11(a), SCRCP that he has previously consulted opposing counsel with regard to the subject matter of this motion and that further consultation would serve no useful purpose.



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P.O. Box 245
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ATTORNEY FOR PLAINTIFF
Coves Darden, LLC

DATE: 11-26-13

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

Coves Darden, LLC,)

Plaintiff,)

v.)

Francisco Jose Garcia)
Ibanez, Dori Derr, and)
Half Moon Stables, LLC,)

Defendants.)
_____)

PLAINTIFF'S INTERROGATORIES
TO DEFENDANT
GARCIA Y IBAÑEZ

TO: DEFENDANT AND THOMAS YOUNG, JR., ESQUIRE, ATTORNEY FOR
DEFENDANTS:

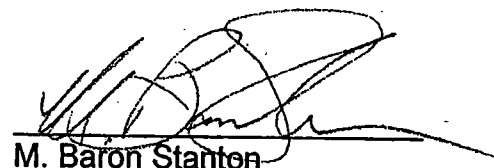
PREGUNTAS OFICIALES REFERENTE A LA REGLA 33

1. *Favor informar nombres completos, direcciones con codigo postales, numeros de teléfono con códigos de area, y correos electronicos para todos los participantes que vd. conoce o que vd. presume que existan o que vd supone que va a participar con relación a clínicas o clases en el area de Chicago, en Carolina del Norte, en St. John Island, en Aiken, en Georgia, en Florida, y en Nueva York, de acuerdo con el Request No. 1, arriba.*

2. *Favor informar nombres completos, direcciones con codigo postales, numeros de teléfono con códigos de area, y correos electronicos para todos los organizadores que vd. conoce o que vd. presume que existan con relación a clínicas o clases en el area de Chicago, en Carolina del Norte, en St. John Island, en Aiken, en Georgia, en Florida, y en Nueva York de acuerdo con el Request No. 1, arriba, y con relación a los propietarios/dueños de los locales donde tales clínicas o clases se*

realizaron.

3. Favor informar nombres completos, direcciones con codigo postales, numeros de teléfono con códigos de area, y correos electronicos para todos los organizadores, promotores o patrocinadores que vd. conoce o que vd. presume que existan con relación a clínicas o clases en el area de Chicago, en Carolina del Norte, en St. John Island, en Aiken, en Georgia, en Florida, y en Nueva York de acuerdo con el Request No. 1.



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803-929-1484
ATTORNEY FOR PLAINTIFF
Coves Darden, LLC

DATE: 9-27-13

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

Coves Darden, LLC,)

Plaintiff,)

v.)

Francisco Jose Garcia)
Ibanez, Dori Derr, and)
Half Moon Stables, LLC,)

Defendants.)

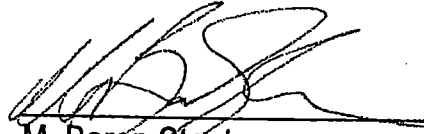
PLAINTIFF'S INTERROGATORIES
TO DEFENDANT
GARCIA Y IBANEZ

TO: DEFENDANT AND THOMAS YOUNG, JR., ESQUIRE, ATTORNEY FOR
DEFENDANTS:

INTERROGATORIES PURSUANT TO RULE 33

1. Please provide the complete names, addresses with zip codes, phone numbers with area codes, and e-mail addresses for all known or assumed or expected participants in the clinics or classes in the Chicago area, in North Carolina, in St. John's Island, in Aiken, in Georgia, in Florida, and in New York referred to in Request No. 1, above.
2. Please provide the complete names, addresses with zip codes, phone numbers with area codes, and e-mail addresses for all known or assumed or expected hosts of the clinics or classes in the Chicago area, in North Carolina, in St. John's Island, in Aiken, in Georgia, in Florida, and in New York referred to in Request No. 1, above and of the owners of the premises on which same were conducted.
3. Please provide the complete names, addresses with zip codes, phone numbers with area codes, and e-mail addresses for all known or assumed or expected organizers, promoters or sponsors of in the clinics or classes in the Chicago area, in North

Carolina, in St. John's Island, in Aiken, in Georgia, in Florida, and in New York referred to in Request No. 1, above.



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803-929-1484
ATTORNEY FOR PLAINTIFF
Coves Darden, LLC

DATE: 9-27-13

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

Coves Darden, LLC,

Plaintiff,

v.

Francisco Jose Garcia
Ibanez, Dori Derr, and
Half Moon Stables, LLC,

Defendants.

PLAINTIFF'S SECOND REQUEST FOR
PRODUCTION TO DEFENDANT
GARCIA Y IBAÑEZ

**TO: DEFENDANTS AND THOMAS YOUNG, JR., ESQUIRE, ATTORNEY FOR
DEFENDANTS:**

Pedimos respuestas completas a la solicitud anterior hecha por Coves Darden, con fecha de 15 de mayo de 2013. La empresa Coves Darden LLC pide, de acuerdo con la rule 34, SCRCP, que el demandado Sr. Francisco José García Ibañez responda por escrito a cada una de las categorías abajo, y que mencionada persona presente para nuestra inspección fotocopias de los documentos y informaciones abajo, hasta las 10:30 de la mañana, cinco días después de la fecha de la presentación de su respuestas por escrito, al estudio del abogado abajo firmado. Recordamos que los materiales presentados deben ser completos, sin sacar el contenido o deletar informaciones, y se debe presentar una reproducción fiel y total de los documentos en cuestión.

Favor presentar:

1. Todo y cualquier tipo de documentación referente a remuneración, dinero recibido o valores remitidos, derivados de clínicas o clases individuales en las que el Sr. Ibañez haya participado o en las cuales haya participado y/o organizado fuera del

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local de Half Moon Stables. Nuestra solicitud incluye todo tipo de contrato, acuerdo, lista, formulario de matricula o registro, emails, o correspondencia con respecto a la organización, publicación, o mantenimiento o contactos posteriores referente a tales clínicas o clases. Con respecto a las clínicas o clases, eso se refiere a las clínicas enumeradas por la Sra Derr en su declaración, como por ejemplo aquella en Chicago, aquella en Carolina del Norte, y aquella en Saint John Island. Eso también se refiere a las clínicas o clases identificadas por el Sr. Ibañez en su declaración, como por ejemplo aquellas en Aiken, Georgia, Florida y Nueva York. Para evitar mal entendimiento y confusiones, los documentos apresentados deben incluir, pero no exclusivamente deben limitarse, a comunicados por escrito (también comunicaciones electrónicas) con respecto a las clínicas o clases y cualquier remuneración o valores recibidos por Ibañez, o a ser recibido por Ibañez prospectivamente, derivadas de sua participación en las clínicas o clases, ó valores que el Sr. Ibañez en la realidad recibió por su participación en tales clínicas o clases, así como cualquier remuneración ó valores remitidos o recibidos por Half Moon.

2. Los formulario de impuesto de renta de 2012 y 2013, con todos sus anexos, del Sr. Ibañez, que se enviaron al United States Internal Revenue Service, o para cualquier entidad en cualquier jurisdicción como por ejemplo el estado de South Carolina, y el país soberano de España, y cualquier gobierno local.

3. Copia de cheques recibidos por clínicas o clases particulares identificadas en el número 1 arriba. (Tal solicitud se dirige al Sr. Ibañez, independiente de quien tenia el derecho final de recibir el dinero o los valores indicados.)

4. Copia de todos los documentos bancarios de depósitos reflejando depósitos de cheques recibidos como pago por clínicas o clases particulares identificados en el número 1, arriba (Tal solicitud se dirige al Sr. Ibañez, independiente de quien tuviese el derecho final de recibir tales valores.)

5. Copia de todos los estados de cuenta bancarios que reflejan depósito de cheques o de acreditación electrónica de dinero recibido como pago por las clínicas o clases particulares identificados en el número 1, arriba. (Tal solicitud se dirige al Sr. Ibañez, independiente de quien tuviese el derecho final de recibir tales valores.)

6. Copia de todos los archivos de Half Moon o de la Sra Derr (archivos esos que incluyen pero no se destinan exclusivamente, a documentos de Quickbooks en formato de resumen, otros resúmenes contables de cualquier especie, registro de entradas y salidas de débitos y créditos, o cualquier otro tipo de anotación contable, sea en forma de papel o por vía electrónica, como por ejemplo extractos bancarios, formulario de impuesto de renta o de "sales tax", reconciliaciones bancarias o cualquier documentacion del Sr. Ibañez con respecto a trabajos fuera del ámbito de Half Moon, y documentación referente a aquella clausula de remuneración de contrato entre el Sr. Ibañez y Half Moon, que haya generado cheques o remuneración a él o cualquier entidad o persona como pagamiento por clínicas o clases privadas identificadas en el ítem 1, arriba. (La solicitud de este párrafo se dirige al Sr. Ibañez independiente de quien tenía el derecho final de recibir tal remuneración, valores, ó dinero.)

7. Copia de agenda/calendario de compromisos del Sr. García Ibañez, pasajes aéreos, programas, itinerarios, programaciones, anuncios, brochuras, resúmenes sobre programas de enseñanza hechos del Sr. Ibañez a alumnos, resúmenes de viajes, recibos de hoteles, documentación sobre viajes o solicitudes para reembolso para costos de viajes, documentación sobre costos de transporte de trabajo, documentación sobre costos de alojamiento de caballos, documentación sobre costos de alimentación de caballos, listas de participantes registrados o esperados para eventos, o cualquier tipo de documentación de negocios reflejando las fechas y duraciones, y los locales y personas participantes, y los valores pagados o recibidos con respecto a clínicas o clases particulares identificadas en el numero 1 arriba, y cualquier clínicas efectuadas fuera de local de Half Moon (La solicitud de este párrafo al Sr. Ibañez independiente de quien tenía el derecho final de recibir tal remuneración, valores, o dinero).



M. Baron Stanton
STANTON LAW OFFICES, P.A.
1728 Main Street
P.O. Box 245
Columbia, South Carolina 29202
803-929-1484
ATTORNEY FOR PLAINTIFF
Coves Darden, LLC

DATE: 10-7-13

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

Coves Darden, LLC,)

Plaintiff,)

v.)

Francisco Jose Garcia Ibañez,)

Dori Derr,)

and Half Moon Stables, LLC,)

Defendants.)
_____)

CERTIFICATE OF SERVICE

The undersigned certifies that the undersigned served on this date a copy of the foregoing on the following, by causing a copy to be mailed, by first class mail, with proper postage affixed, and addressed as follows, to the following addressee(s):

Thomas R. Young, Jr., Esquire
409 Park Avenue SW
Post Office Box 651
Aiken, SC 29802


M. Baron Stanton

Date: 10-7-13

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

Coves Darden, LLC,)

Plaintiff,)

v.)

Francisco Jose Garcia)

Ibañez, Dori Derr, and)

Half Moon Stables, LLC,)

Defendants.)

**PLAINTIFF'S SECOND REQUEST FOR
PRODUCTION TO DEFENDANT
GARCIA Y IBAÑEZ**

**TO: DEFENDANTS AND THOMAS YOUNG, JR., ESQUIRE, ATTORNEY FOR
DEFENDANTS:**

Without waiving incomplete or inaccurate responses to Plaintiff's previous request for production to all Defendants, dated on or about May 15, 2013, Plaintiff, Coves Darden, LLC requests pursuant to Rule 34, SCRCP, that Defendant, Francisco Jose Garcia Ibañez, respond in writing as to each category below, that defendant will produce for inspection and copying, at 10:30 a.m., five days after the written response, at the office of the undersigned, unedited, unredacted, complete and authentic versions of the following documents or things.

1. Any and all records, including, but not limited to, records reflecting money earned, received, or in any way remitted, as a result of clinics or individual classes held, taught, or participated in, by Francisco Jose Garcia Ibañez not on the premises of Half Moon Stables. This request should be deemed to include any and all contracts, agreements, sign-up sheets, registration forms, e-mails, or correspondence concerning the organizing, publicizing, holding, and follow-up of and to such clinics or classes.

These clinics or classes should include, but not be limited to, the clinics described by Ms.

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Derr in her deposition such as the one in the Chicago area, the one in North Carolina, and the one in St. John's Island, and the clinics or classes described by Mr. Ibañez in his deposition such as the ones in Aiken, Georgia, Florida, and New York. So that there is no misunderstanding, the documents requested should include, but not be limited to, any written (including electronic) communications pertaining to setting up and holding these clinics or classes and pertaining to any and all money which Ibañez prospectively expected to receive as a result of the clinics or classes or did actually receive as a result of the clinics or classes, as well as any money remitted to or collected by Half Moon.

2. The 2012 and 2013 income tax returns, with all schedules and worksheets, of Defendant Ibañez, filed with the United States Internal Revenue Service, or any other jurisdiction including but not limited to the State of South Carolina, the Country of Spain, or any local governments.

3. Copies of all checks received in payment for the clinics or lessons referred to in Request No. 1, above. (This request is directed to Defendant Ibañez, regardless of who had the ultimate right to the money.)

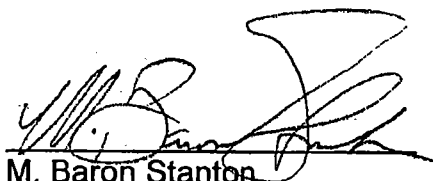
4. Copies of all deposit slips reflecting deposit of checks received in payment for the clinics or lessons referred to in Request No. 1, above. (This request is directed to Defendant Ibañez, regardless of who had the ultimate right to the money.)

5. Copies of all bank statements reflecting deposit of checks or electronic crediting of money received in payment for the clinics or lessons referred to in Request No. 1, above. (This request is directed to Defendant Ibañez, regardless of who had the ultimate right to the money.)

6. Copies of all business records of Half Moon or Derr (including but not limited to Quickbooks entries in report form, general ledger entries, bank account check register

entries or other accounting system entries, paper or electronic bank statements, income or sales tax returns, and recaps, reconciliations or reports to or by Ibañez with respect to the "outside work" compensation clause in his written employment contract) reflecting checks or money received (by anybody) in payment for the clinics or lessons referred to in Request No. 1, above. (This request is directed to Defendant Ibañez, regardless of who had the ultimate right to the money.)

7. Copies of all calendar entries, plane tickets, itineraries, schedules, programs, advertisements, flyers, handouts, instruction sheets, travel records, hotel receipts, travel reimbursement records, horse-transport expense records, horse-boarding expense records, horse feeding expense records, lists of expected participants, or business records reflecting the dates and lengths of, locations of, persons participating in, or money paid or received in connection with, the clinics or lessons referred to in Request No. 1, above or any other off-premises clinics. (This request is directed to Defendant Ibañez, regardless of who had the ultimate right to the money.)



M. Baron Stanton
STANTON LAW OFFICES, P.A.
1728 Main Street
P.O. Box 245
Columbia, South Carolina 29202
803-929-1484
ATTORNEY FOR PLAINTIFF
Coves Darden, LLC

DATE: 10-7-13

From: "Dori Derr" <dorider@gmail.com>
Subject: FW: Garcia Clinic
Date: August 10, 2013 3:45:58 PM EDT
To: <jimderlaw@gmail.com>

From: Dori Derr [mailto:dorider@gmail.com] Sent: Tuesday, October 30, 2012 10:57 AM To: 'dennis wood' Subject: RE: Garcia Clinic

Good job, Dennis!!!! Don Francisco will be sooo happy. He just had a very successful clinic in Chicago, and the barn here is full of horses now. If his life is filled with good work, happy people and enough GREEN I see no reason why he would not do everything to come back to us for another year or two! I thank you and applaud you for your effort in this.

We are off to the Regional championships in Williamston Va tomorrow. Tomi and Francisco qualified for the Intermediare II champ's. Next season we will try for Grand Prix. Also, Tomi has been named USDF Champion I-2 for the country for the nationwide All Breeds Awards. He is listed with the IAHLA group. Yeah, Tomi! He had a rough start with his white line and other problems but he and Francisco have pulled it together. I am going to make a big effort to be there to help you all as well for your clinic. We all want to be of service. Hope everything is good with you and your dear horse.
Kindly,i

Dori

From: denniswood@gmail.com [mailto:denniswood@gmail.com]
Sent: Tuesday, October 30, 2012 8:31 AM To: Hunter, Megan; Ardid, Paloma; campbell, pat; Kraft, Regine; Thurston, Cheri; Clarke, Lee Ann; Cochran, Wendy; Miller, Cindy; gardner, rosemary; Edge, Kelly Cc: DIANA HUNT; derr, Dori Subject: Garcia Clinic

If you are receiving this e-mail you are in a group that has expressed interest in the Garcia clinic. The response has been enthusiastic. This

HalfMoonStable000099

is indeed a rare opportunity.

The drawback of this is that there are not enough hours in the day to accomodate all of you. So those with their payment in first will be assured a spot. There are a few options left. Lunge lessons could be 1/2 hr and split between 2 riders (\$50 each). Let me know what time slots you want, your flexibility, and what you would like to do. I'll do my best to accomodate everyone.

I may create a waiting list. Perhaps he can return for another clinic at a later date.

On behalf of Don Francisco, thank you for your enthusiastic support.

From: "Dori Derr" <doriderr@halfmoonstable.com>
Subject: FW: francisco ibanez clinic
Date: August 10, 2013 3:47:19 PM EDT
To: <jimderlaw@halfmoonstable.com>

-----Original Message-----

From: suzanne slocum [mailto:suzanne.slocum@halfmoonstable.com]
Sent: Monday, April 29, 2013 9:12 AM
To: doriderr@halfmoonstable.com
Subject: francisco ibanez clinic

ms derr,
i'm sorry i missed his clinic in march. i read the article in the aiken
horse. i saw him ride at the camden show. you gave me your card. is he
having another clinic this year?
how much does he charge for a private lesson? i recently started first level
with my 8 year hanoverian mare.
thank you.
suzanne slocum

HalfMoonStable000101

From: "Dori Derr" [mailto: [REDACTED]]
Subject: FW: promo flyer
Date: August 10, 2013 3:48:42 PM EDT
To: <jimderlaw@ [REDACTED]>

From: DIANA HUNT [mailto: [REDACTED]] Sent: Sunday, May 19, 2013 4:45 PM
To: Derr, Dori Subject: promo flyer

Hi -- this is what I'm working up as info for a promo flyer for anyone interested or who come by the stalls at the show. text will overlay a photo. again, changes? Suggestions?

Half Moon Dressage Center

Home of Classical
Dressage

2820 Old 96 Indian Trail
Wagener, SC 29164

Facility. 34 acres with a 16 stall barn, attached covered arena plus a standard dressage ring -- both with international competition footing, 13 acre jumping field and turn out paddocks.

Training. Resident trainer, Francisco José García Ibañez is on an extended sabbatical from the Royal Andalusian School of Equestrian Art in Jerez, Spain, where he is one of only a few who have reached

HalfMoonStable000102

Master/Trainer/Specialist status. Sr. García trained the 2008 Olympic Silver Medal winner, Oleaje. Individual lessons and full training are available. All levels of ability and all breeds of horses are welcome. Sr. García also is available for clinics.

What is Classical Dressage? The tenants of Classical Dressage are lightness and suppleness. Sr. García stresses balance, elegance and harmony between horse and rider. He looks at dressage as an art form.

Boarding. Stalls with daily turn-out are available on a nightly or monthly basis when horses are in training.

Breeding. Half Moon Dressage Center is a P.R.E. breeding facility. Standing at stud is P.R.E. Qualified Tomillo VII, 2011 Region 1 Reserve Champion I-11. Several young stallions are soon to make their breeding debut.

For information on breeding prices and lesson availability, contact owner Dori Derr, ~~823-334-8844~~ or ~~doriderr@half-moon-dressage.com~~. Visit the website at www.half-moon-dressage.com.

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HalfMoonStable000104

From: Deborah Stuck
Sent: Friday, August 23, 2013 10:33 PM
To: DIANA HUNT
Subject: Re: lessons in August

→
what is the name of the ferrier that works with Ty, and Mario's brother.
I am trying to find someone to work with Amira
?Antonio Sambrano?

-
On Tue, Jul 30, 2013 at 9:10 PM, Deborah Stuck
<dstuck@...> wrote:
thanks

-
On Tue, Jul 30, 2013 at 11:15 AM, DIANA HUNT
<...@...> wrote:
Deb: I don't know if he has a preference-- wear what you normally
do and bring the boots etc. as a backup if needed. Below I've
copied francisco's reply to me regarding lessons. The Saturday
lessons are more because it usually is a day off; the \$90 for him
to ride on Fri. is a new one I didn't know about! This can be
changed when you get there if you want something different. You
might ask Dori if she would give a discount off the board since you
are bringing your own hay and will do your own grooming. Best,
Diana

-
Hi Diana
If I understand you correctly, this plan is as follows:
On Thursday afternoon, she rides her horse and analyzed.
On Friday morning I ride the mare and evening give an exercise class
and position to the rope.
On Saturday I'll be back to ride the horse and in the afternoon she
receives a dressage lesson so you know what work to do at home.

HalfMoonStable000105

All this would be \$ 460, you defining specific: Class Thursday \$ 85
rides Friday am \$ 90, \$ 85 class Friday pm, Saturday am ride \$ 100 and \$
100 pm Saturday class

----- Original Message -----

From: Deborah Stuck

To: DIANA HUNT

Sent: Monday, July 29, 2013 9:08 PM

→ Subject: Re: lessons in August

just thought, does Francisco have opinions as to attire or paddock vs
dress boots for the lessons?

I of course have riding pants but one is blue jean, others dressier and I
normally practice in paddock boots and half chaps but I do have dress
boots if he prefers?

On Sat, Jul 27, 2013 at 12:43 PM, Deborah Stuck

<dstuck@...> wrote:

Call me when u can this weekend ~~8:00-9:00 PM~~

On Saturday, July 27, 2013, Deborah Stuck wrote:

yes, still planning to come, I will try to arrive in the am Thursday, I
would not mind trying to ride twice each day but I am not sure How
Francisco would prefer to approach this. You had mentioned he likes to
watch someone ride, then work the horse himself. let me know.
Remind me about local places to stay. Do I need to bring my own hay?
thanks

On Fri, Jul 26, 2013 at 12:50 PM, DIANA HUNT

<...@...> wrote:

Hello Deb: We had last emailed in May concerning your taking a
day or so off from work in August to come down with your horse
and take back to back lessons with Francisco. You had suggested
arriving Thursday, Aug. 8 for an afternoon lesson, then Friday and

Saturday lessons. Does that still work for you? I hope it does and
we will block time for you. There is that covered arena for shade.
Let me know.
Regards, Diana

Sit loosely in the saddle of life.--Robert Louis Stevenson

-
-
-
-

From: Diana Hunt [redacted]
Sent: Monday, August 26, 2013 4:05 PM
To: Dori Derr
Subject: Re: PRACTICE THE 3 Ps.docx

maybe he'd like to be an eventer. I'm forwarding to you comments from Deb Stuck. of course, we all agree that if Frisco is going to attract more business his English has to improve. He's been here 2 years now, so no more excuses. maybe he should go to Sarah Eakin now before the family gets here and his time is not so free. I believe she was \$35 an hour, she's in Aiken.

Speaking of speaking, I asked Susan Sander if she would be interested in translating for the 3Ps clinic and she said yes. she will get back to me on cost. because this is an upper level clinic and more detailed, I think it is imperative to have a translator. That will affect the cost of the clinic. I'll ask Betsy if she's interested to sponsor again. Maybe Lydia with the step 'n soak boots. diana

p.s. hope Jim is feeling better

From: Dori Derr
Sent: Monday, August 26, 2013 8:40 AM
To: 'Diana Hunt'
Subject: RE: PRACTICE THE 3 Ps.docx

Okay. Nov 16. What a dayyyyy I had yesterday. Amapollo is going to be getting some undivided attention from Frisco. What a jumper!

DD

From: Diana Hunt [redacted]
Sent: Saturday, August 24, 2013 4:17 PM
To: Derr Dori
Subject: PRACTICE THE 3 Ps.docx

where?
Hi - with this new stupid Windows 8 I can't seem to copy into the body of the email. Pls see attachment. What do you think of this wording? Was going to use one of the escuela pix where he is asking on the ground for something. that date looks ok from the carolinas book. next weekend, 9-10, is Low Country Dressage. Memorial Championships in Williamston, NC are Oct 31-Nov. ., I don't know if that would impact many people. We could do Nov. 16-17. Usually stays nice til early Dec. diana

HalfMoonStable000108

From: DIANA HUNT
Sent: Tuesday, May 28, 2013 8:32 PM
To: Dori Derr
Subject: Re: Availability at Half Moon Dressage

yeh, sounds great! d

----- Original Message -----

From: Dori Derr

To: 'DIANA HUNT'

Sent: Tuesday, May 28, 2013 7:29 PM

Subject: FW: Availability at Half Moon Dressage

This is the message I told you about this morning.

DD

From: Heather McCann
Sent: Tuesday, May 28, 2013 12:26 AM
To: dori
Subject: Availability at Half Moon Dressage

Hi,

My name is Heather McCann. I may be relocating to the Lexington, SC area in August and am looking for a dressage stable for my 8 yr Oldenburg mare and myself.

Your facility looks beautiful.

My mare-Rosatta- and I are currently showing Third Level dressage and are looking for an active dressage barn with a trainer. From your website it looks like Half Moon Dressage is an active high quality dressage training facility.

Would you have a stall available for August?

I look forward to hearing from you,

Warmest regards,

Heather

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HalfMoonStable000109

From: DIANA HUNT
Sent: Sunday, May 19, 2013 4:45 PM
To: Derr, Dori
Subject: promo flyer

Hi -- this is what I'm working up as info for a promo flyer for anyone interested or who come by the stalls at the show. text will overlay a photo. again, changes? Suggestions?

Half Moon Dressage Center

Home of Classical Dressage

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For information on breeding prices and lesson availability, contact owner Dori Derr, 803 ~~564-1111~~ or ~~loriden@ymail.com~~. Visit the website at www.half-moon-dressage.com.

HalfMoonStable000110

From: DIANA HUNT [REDACTED]
Sent: Wednesday, May 01, 2013 7:51 PM
To: Derr, Dori
Subject: amy 2

OK, we're all set. got it worked out. I will drive out Sat. to lead FG to Amy's barn and watch so I can be of any slight help in translations. If all works out, she'd like a 3PM spot Tuesday and Wednesday. Judges a show out of town rest of week. I am confirming with FG, so no need for you to waste any more of your time. d
Sit loosely in the saddle of life.
—Robert Louis Stevenson

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HalfMoonStable000111

Coves Darden's motion to reconsider, dated December 29, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 12-CP-02-01772

Coves Darden, LLC,)

Plaintiff,)

MOTION TO RECONSIDER

Francisco Jose Garcia Ibañez,)

Dori Derr,)

and Half Moon Stables, LLC,)

v.)

Defendants.)

Plaintiff respectfully requests pursuant to 59, SCRPC, that the Court reconsider its order dated December 5, 2013 (entered December 20, 2013), vacate the order, and deny the Defendants' motion for summary judgment in all particulars. In the alternative, Plaintiff moves the Court to allow amendment of the pleadings to address any rulings the Court has made, and allow any portions of the case unaffected by the Court's ruling to go forward.

The grounds for this motion are that it appears the Court overlooked some principles of law and did not rule on some of the issues presented in light of the whole factual context of the case.

Namely, the Defendants filed a summary judgment motion on an unstated basis on January 28, 2013.¹ Not having received any grounds for the motion, Plaintiff filed a brief on February 26, 2013. In violation of Rule 7(b)(1) of the South Carolina Rules of Civil Procedure,

¹The motion is at least named a motion for summary judgment, seeking dismissal of the merits of the case. It is not a motion to stay and to compel arbitration, as Defendants deny that there was ever any agreement of the parties to arbitrate, and have not made any such motion, and have not made any demand for arbitration.

Defendants only later began to make arguments and file materials, arguing, for example, that there was lack of a written contract.

At earlier points in the proceeding, while declining to comply with discovery, Defendants actually gave every indication that lack of a "contract" was their sole ground for summary judgment. (See Plaintiff's brief dated May 14, 2013, pp. 5-6.)

Their periodically asserted, and not asserted, grounds for summary judgment on the other counts of the complaint, e.g., breach of fiduciary duty, interference with prospective business relations, and unfair trade practices, were largely derivative of the assertion that there was no contract.

Thus, to the extent their motion regarding absence of contract was ill-founded, so was their motion regarding the other counts.

Plaintiff submitted the Affidavit of Miguel Coves, clearly stating that a contract existed between Plaintiff and Defendant Ibanez.² It was clear that Plaintiff had a contract with Ibanez

²Among other things, Mr. Coves stated the following:

4. Before he agreed with us on the terms of the relationship which was to follow, he got a good look at our horses and said he thought well of them.

5. In the initial visits, Ibanez' affiliation with us was publicized, and at one or more events at our stable, I believe Ibanez was introduced to Derr or persons affiliated with her, among others invited.

6. We entered into an agreement to employ Ibañez to act as an expert equestrian trainer, and to provide expert instruction and consultancy services in the equestrian arts for clients of Coves Darden Farm. We both acknowledged we expected the relationship to continue for at least two years. The probable expected initial length of the visa was three years, and his likely initial leave of absence from his prior employment relationship was to be two years.

7. Under the terms of the agreement, we agreed to pay Ibañez 6000 Euros per month (a little less than \$8,000 U.S.), furnish him a house, and pay for his transportation to work. Ibañez agreed to work completely and exclusively for us during the term of the agreement. We also agreed to pay for his individual

and that the parties had agreement on all material terms. It was further clear that Plaintiff thought

travel to the U.S. on the first entry under the visa.

8. Ibanez was quick to commit us to the matter, so much so, that he commenced his leave of absence from his former employer in Spain (The Royal School) before we could apply for a visa for him. We had to explain to him that he could not come to the U.S. to commence work until we obtained the visa.

9. We then agreed to begin paying Ibañez a stipend of the same amount in Spain before he commenced work in the United States, while he awaited arrangements for the visa. He often communicated when his money was not available on the very first of the month.

10. In Spain, we acquainted him with our primary source of horses in Spain, involved him at the site in Spain with our friend and business contact there, and asked his assistance in riding and selecting horses. Our friend and business contact provided Ibanez and his family various accommodations.

11. We paid Ibanez' travel again to the United States for several months in the time before the visa was granted, during which time we allowed him to become familiar with the horses and farm in our absence, and asked him to live in our house and look after things for us while we were gone. We continued to host him and his family and visited with him further upon our return.

12. We arranged for and paid for the application for and processing of, the nonimmigrant petition allowing Ibañez to enter the United States. He brought his whole family. We paid the legal expenses pertaining to this process, and paid for Ibañez's travel expenses from Spain to the United States.

13. In the course of applying for the visa, some common aspects of the agreement were reduced to writing and submitted to the immigration authorities as the terms which would govern the employment if the visa was granted.

14. We furnished Ibañez and his family a home to live in near the stables where the horses were to be trained, and purchased and furnished for Ibañez's use while in the United States, an automobile. We paid Ibañez \$8000 per month. We also furnished him with a family dog.

15. The basis for the nonimmigrant visa, known as an "O-1 visa," was Ibañez's peculiar, extraordinary, and unique ability to train the particular breed of horses in question, generally known as "Spanish Horses," or "P.R.E." (Pura Raza Espanola). Additionally, we had a particular need for this level of expertise, because of the size of our operation, the particular breed in question, and the level of breeding and competition to which we aspired. Virtually all our horses are P.R.E., and they have won many awards. We have as many as 85-90 at a time.

16. The O-1 visa itself, incorporated into the contract, required that Ibañez work exclusively for us as a trainer. We were very clear that regardless of the visa, this was an exclusive relationship and that it would take time and a moral commitment for us to get the financial benefit out of the extraordinary effort and expenditures we were investing in it.

that a contract had been reduced to writing in the course of the application process for Ibanez's highly specialized visa to enter the United States. This affidavit of Coves was not "contradictory," was no surprise, was largely consistent with Defendant Ibanez's own sworn deposition testimony on the existence of a contract, and dispensed with any shadow of a question about summary judgment on the issue of whether there was a contract.

What is even more remarkable is that, once Ibanez was finally deposed, he agreed the parties had a contract. His deposition was quoted at length in Plaintiff's brief.

Summary judgment based on absence of a "contract" was therefore erroneous with respect to the contract count of the complaint and all other counts of the complaint. Any other asserted bases for dismissal of the other counts were without merit, as briefed by Plaintiff either anticipatorily or in response to sporadic and spontaneous assertions by Defendants as issues were identified and presented under their the aegis of their January 28, 2013 motion which never stated any grounds whatsoever.

When it was clear that there was, by Ibanez's own sworn deposition admissions, if nothing else, an oral contract with specific, long-contemplated, terms, Defendants moved to amend their answer to raise the statute of frauds defense. This statute requires a writing for some, but not all, types of contracts. Plaintiff consented to the amendment. Plaintiff briefed the statute of frauds defense, showing it was inapplicable. In the October 9, 2013 Plaintiff's Supplemental Response to Interrogatories, Plaintiff stated:

In addition to the subjects in his affidavit on file, Michael J. ("Mike") Liberatore (immigration lawyer in Miami), 1000 Brickell Avenue, Suite 400, Miami, Florida 33131, Tel (305) 374-0306, Fax (786) 272-0652, may testify that a nonimmigrant visa such as the one at issue here is always subject to being granted for a shorter time than requested and a shorter time than is typical or authorized and that in fact, this does occur, and may

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result in grants of periods for shorter than one year; further, that he always bears this in mind in assisting clients, and did in the instant matter, in explaining the agreement of the parties.

In addition to the subjects in his affidavit on file, Miguel Coves may testify that the length of the initial term of the special employment contract was for whatever initial duration the O-1 visa was granted and remained in good standing. This was agreed to be up to three years if also supported by a leave of absence from Ibanez's previous job, and could also end earlier with expiration or earlier termination of the O-1 visa, and would also probably be extended if the situation was agreeable and if the authorized stay under the visa could be extended; the parties also contemplated and expected, but could not be certain, that the initial term would be two or three years, based on the usual attributes of an O-1 visa, Ibanez's leave of absence from his previous job, and the stated desires and agreement of the parties.

Despite the lack of any stated grounds or accompanying materials whatsoever in Defendants' initial notice of motion, and despite the evolving arguments made by Defendants over the course of several hearings or partial hearings, Plaintiff filed numerous discovery materials with the Court, including answers to interrogatories, amended responses to interrogatories, supplemental responses to interrogatories, documents produced by Defendants, deposition transcripts, transcripts of nonappearances for depositions, and affidavits, including the Affidavit of Miguel Coves, covering a fairly comprehensive factual background of the case and many of the elements of the case.

In the May 20, 2013 Plaintiff's Supplemental Amended Response to Interrogatories and Requests for Production, Plaintiff stated:

Between December of 2010 and January of 2012, Plaintiff entered into an agreement for employment of Ibanez on certain terms, and incident to applying for the visa which was part of those terms, the parties reduced the common terms of the agreement to writing. The written document may or may not have been countersigned by Ibanez. Upon information and belief, based on statements of Ibanez' counsel in court on May 20, 2013, Ibanez denies the existence of a valid written contract. Upon information and belief, the written document was presented to and acknowledged by Ibanez in or before the time of his visa interview in February of 2012.

Plaintiff submitted briefs, respectfully incorporated in the instant motion, dated as follows:

1. February 26, 2013,
2. March 1, 2013,
3. May 14, 2013,
4. May 17, 2013, and
5. May 28, 2013.

More recently, Plaintiff submitted as a form of briefing, a letter with a proposed order for the Court, setting forth in the letter, multiple reasons why Defendants' motion for summary judgment should be denied. Namely, there was sufficient evidence in the record to show, at minimum, a dispute of the material facts on the following claims, features, and defenses, thus requiring denial of summary judgment:

1. Whether there was a verbal contract;
2. Whether, in its verbal form, the contract fell within the statute of frauds;
3. Whether there was a written contract;
4. Whether the contract – be it verbal or written – was breached with an accompanying fraudulent act and fraudulent intent;
5. Whether there was an employment relationship giving rise to fiduciary duties, which were breached;
6. Whether there was a special relationship giving rise to fiduciary duties, which were breached;

7. Whether the defendants Derr and Half Moon interfered with the employment contract, regardless of whether it was at-will, or the subject of additional terms under a verbal or written agreement;
8. Whether the defendants Derr and Half Moon interfered with the relationship and its prospects going forward;
9. Whether the defendants Derr and Half Moon violated the U.S. Immigration and Nationality laws as part of the improper or illegal means or methods of interference, or other lack of justification; and
10. Whether the defendants Derr and Half Moon violated the U.S. Immigration and Nationality laws as part of trade or commerce and the public impact of the interference constituting the UTPA violation.

In the Defendants' proposed order signed by the Court, the Court did not appear to address these issues in light of the full, true facts of the case and its procedural history in proper context.

It is respectfully submitted that the proposed order signed by the Court misapprehends the law and facts, and fails to fully rule on issues in the following respects:

1. The proposed order signed by the Court erroneously applies inapplicable federal court glosses of the Federal Rules of Civil Procedure in discussing the standards of decision for a summary judgment motion under Rule 56, SCRPC, rather than the abundant controlling caselaw of the appellate courts of South Carolina setting forth the standards to be applied in courts of this State.

2. The proposed order signed by the Court fails to properly consider the abundant evidence in the case establishing that the parties had an oral contract of employment; this contract was stated to be "contemplated" to last for at least two years, but it was possible for it to last less than a year. That is, it was not impossible for the contract to be performed in less than a year, depending upon the duration of the visa of the employee. See, e.g., 10-9-13 discovery response, quoted hereinabove.

3. The proposed order signed by the Court fails to properly consider the abundant evidence in the case establishing that the Plaintiff had gone beyond the parties' existing oral contract and prepared a written contract, which was discussed at length with Defendant Ibanez before he applied for his visa and upon which he relied in obtaining his visa to enter the U.S.

4. The proposed order signed by the Court fails to properly consider an early interrogatory response and response to request for production in the case concerning the nature of the contract in the full, unexcerpted, context of the responses and in the context of the extensive deposition testimony of Defendant Ibanez himself, the affidavit of Miguel Coves, supplemental and amended discovery responses all on file with the Court, and statements of counsel at various hearings.

5. The proposed order signed by the Court misapprehends and misapplies, without citation of authority, the concept of a "judicial admission." The order employs this device to deny the existence of an oral contract. In so doing, the Court erroneously overlooks the significance of abundant evidence of both an oral contract clearly not within the statute of frauds, and of a written contract relied upon by Defendant Ibanez, which he has never clearly denied receiving or signing. An early interrogatory response in a case is sometimes admissible, but,

contrary to the Court's apparent holding, does not permanently bind a party to an application of the response in a manner calculated to avoid the actual facts of the case for purposes of granting summary judgment. The Court itself states in its Order at 1, that the suit by Plaintiff is "for the alleged breach of an oral contract of employment." The Court misapprehends and misapplies caselaw pertaining to in-court stipulations, and sham affidavits submitted in contradiction of prior sworn affidavits, none of which are present here. The result is a strained and erroneously technical rationale for granting summary judgment in contradiction to the facts and justice of the case.

6. The proposed order signed by the Court mistakes Plaintiff's early discovery response that the contract was "written, rather than oral," as a statement that no oral contract existed in the absence of a written contract; it was, rather, a statement that Plaintiff was relying on, and intended to disclose to opposing counsel who represented a non-English-speaking client, a written document. The response to request for production was a disclosure that Plaintiff did not have, in its possession, a countersigned copy of the written document, which had been included in Ibanez's visa processing packet sent to the embassy in Spain for his in-person interview with the consular officer; the response was not an assertion that no countersigned copy existed anywhere in the world.

7. The proposed order signed by the Court misapprehends the law of employment and the law of contracts, in confusing "at-will" employment with the absence of any contract at all. There can be a written contract of a specified duration which is not at-will; there can be a written contract which is at-will; there can be an oral contract of a specified duration which is not at-will; there can be an oral contract with numerous very specific terms, but no specific duration,

which is at-will; and there can be an oral agreement of employment with very few terms which is at-will, and which is still, nevertheless, a contract, with terms and inherent duties. The significance is that, contrary to the Court's reasoning, any of the foregoing contracts are susceptible to claims for breach of anything that is a term of the contract or a duty under the contract.

8. The proposed order signed by the Court misapprehends the black-letter law that an employee owes fiduciary duties to an employer. The Court's order relies on out-of-state, inapplicable cases to construct its novel argument to the contrary. Not a single South Carolina case per se imposes fiduciary duties only upon "managerial" employees. Lawyers, doctors, consultants, butlers, and medical caregivers all owe fiduciary duties to their employers, as they are agents of their employers, and agents are fiduciaries of their principals. Carpenters and chainsaw sharpeners also owe fiduciary duties to the people who employ them. For example, they have a duty to act loyally, and to disclose (truthfully) matters having a bearing on the subject of the agency.

9. The proposed order signed by the Court fails to consider, and fails to recount in its abbreviated statement of perceived "facts," the full attributes of Ibanez's employment and his special relationship with Plaintiff. The facts are not "undisputed" as to the nature of Ibanez as an employee. Ibanez was not merely "an equestrian trainer," as barely recited in the proposed order signed by the Court. Ibanez was not a run-of-the-mill horse assistant. He was brought into the U.S. on a special visa reserved for persons of international renown, as an expert equestrian trainer and consultant. He and his family made international visits at Plaintiff's expense prior to the visa, he and his family stayed in Plaintiff's principals' home, he became the godfather of the

child of Plaintiff's principals, he was left in charge of some of their affairs, he and his family were stationed with a friend of Plaintiff's principals in Spain while he was awaiting his visa, he was paid by Plaintiff while awaiting his visa, he was, with his family, provided a house, a car, and a dog on Plaintiff's residential premises after he arrived to do his job, he was placed in charge of training and assessing millions of dollars' worth of live, rare inventory, he was charged with entering advertised competitions for Plaintiff and becoming part of its brand, etc.

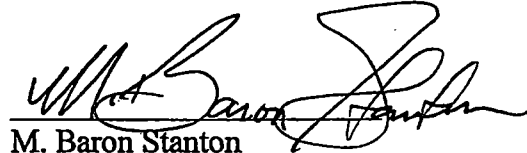
10. The proposed order signed by the Court misapprehends the law of tortious interference with contract and tortious interference with prospective advantage. The former, under South Carolina law, does apply to at-will contracts, same being contracts. The latter does not require the existence of a contract. The order also ignores the further facts of the case, including the fact that Defendants' means of interfering with the relationship included inducing Ibanez with compensation arrangements which were illegal and which Plaintiff, as a competitor, was legally prohibited from offering, and apparently included inducing Ibanez, an admitted liar, to work secretly with Defendants while still employed by Plaintiff, against Plaintiff's interests.

11. The proposed order signed by the Court misapprehends the law of the South Carolina Unfair Trade Practices Act as applying only to "deceptive acts," rather than to "unfair or deceptive" acts, anticompetitive acts, and acts "having the tendency to deceive" even if technically true under another construction. The order also, because it also errs on the tortious interference analysis, ignores the fact that the tortious interference itself is an unfair trade practice. The order also ignores the public impact of facilitating illegal work and illegal compensation of foreign nationals as an inducement to employment, and deceptive advertising

undermining fair competition in an industry (and in a less common and specialized segment of industry) vital to employment, tax revenue, investment, tourism, and development in this State.

For the foregoing reasons and the reasons more fully set forth in Plaintiff's preceding briefings and arguments, Plaintiff asks that the Court reconsider its order as above indicated, vacate it, and deny summary judgment in whole.

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF
Coves Darden, LLC

DATE: 12-29-13

Defendants' memorandum opposing Plaintiff's motion for reconsideration, dated January 7, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Coves Darden, LLC,)

Plaintiff,)

v.)

Francisco Jose Garcia Ibañez,)

Dori Derr,)

and Half Moon Stables, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 12-CP-02-01772

**DEFENDANTS' MEMORANDUM
OPPOSING PLAINTIFF'S MOTION FOR
RECONSIDERATION**

On January 2, 2014, Plaintiff filed a Motion to Reconsider this Court's grant of summary judgment to the Defendants. Plaintiff has failed to set out any valid grounds for reconsideration of this Court's Order, and the arguments set out in the Motion are almost entirely a re-hash of arguments previously made by Plaintiff and rejected by this Court.

I. Lack of a Written Contract Argument

Plaintiff's first argument is that somehow Defendants delayed in asserting the lack of a written contract. This ignores or misstates several points. First, the Complaint itself was silent as to whether the alleged contract of employment was oral or written. After filing their Answer, Defendants promptly served interrogatories and document production requests seeking information on the basis for Plaintiff's claims. Plaintiff's responses asserted that there was no oral agreement and that the contract on which Plaintiff was suing was a written contract. However, in responding to a request to produce, Plaintiff admitted that it did not have a written contract signed by Defendant Garcia.

On January 28, 2013, Defendants filed their Motion for Summary Judgment. The

Memorandum in Support was filed on February 26, 2013 with the grounds that, without an oral contract, and without a signed written contract, there was no legal basis for maintaining an action for breach of contract. That Memorandum also addressed every other cause of action set out in the Complaint. Plaintiff's Opposition to the Motion hinted for the first time that it may be relying on something other than the unsigned written contract when it argued "the absence of a written signature on a contract is not dispositive as to the existence of a contract." (Reply Brief of Plaintiff in Opposition to Defendants' Motion for Summary Judgment, Feb. 28, 2013, p. 4, footnote 2.)

At the first hearing on the Motion for Summary Judgment in March 2013, the Court inquired as to whether Plaintiff would be relying on an oral or written contract. Plaintiff's counsel stated that he needed to conduct further discovery before making that decision. Pursuant to this Court's Order, Defendants provided supplemental responses to written discovery requests and produced Defendants Garcia and Derr for deposition.

This Court then set a second hearing on the Motion for Summary Judgment for May 20, 2013. After the hearing, the Court advised all parties by email of July 9, 2013 that the Court was allowing an additional 90 days of discovery. Further, Plaintiff consented to Defendants' amending the Answer to assert the statute of frauds defense.

After Plaintiff conducted all the discovery that it believed it needed, this Court held a third hearing on the renewed Motion for Summary Judgment in October 2013. At that hearing, Plaintiff's counsel made the following statement:

"Was there a contract? The affidavit of Miguel Coves says yes there was. It was an oral agreement that the parties worked on over lengthy meetings, visits from Spain where the man and his family were hosted in the United States, much expense, multiple visits." (Transcript of Hearing, Oct. 15, 2013, p. 9, ll. 10 - 14)

The above was actually a misstatement of what Mr. Coves said in his Affidavit:

"Ibanez breached his contract with us. He breached the written agreement which he knew existed, and he breached the underlying agreement we had clearly reached before the contract was even written up." (Affidavit of Miguel Coves, p. 7, ¶ 33).

In short, there was no delay in asserting the statute of frauds defense, Plaintiff conducted all the discovery that it believed it needed before the Court ruled on the summary judgment motion, and there was a complete failure on the part of the Plaintiff to establish the existence of a triable issue of material fact with respect to each element of its *prima facie* case.

II. Statute of Frauds

Plaintiff next claims that this Court ignored "abundant evidence that there was an oral contract." This ignores the fact that Plaintiff itself has made a number of mutually contradictory claims regarding the nature of the relationship between the parties. In responding to interrogatories, Plaintiff denied the existence of an oral contract and asserted that the agreement was written, although it could not produce a signed copy. Switching positions, Plaintiff then filed an Affidavit of Miguel Coves alleging that there was an oral contract of employment for between two and three years. (Affidavit of Miguel Coves, p. 2, ¶ 6: "We both acknowledged we expected the relationship to continue for at least two years."). Later in that same Affidavit, Mr. Coves covered all his bases by claiming that there was both a written *and* an oral contract. ("Ibanez breached his contract with us. He breached the written agreement which he knew existed, and he breached the underlying agreement we had clearly reached before the contract was even written up." (Affidavit of Miguel Coves, p. 7, ¶ 33)). And in Supplemental Amended Responses to

Interrogatories, Mr. Coves stated that "The written document may or may not have been countersigned."

In short, Plaintiff completely failed to come forward with evidence regarding the nature of the relationship between the parties. If, as it sometimes claims, the contract was written, then Plaintiff has failed to produce a copy with Mr. Garcia's signature. If, on the other hand, it claims the agreement was oral, then it is bound by Mr. Coves' affidavit testimony that the relationship was for between two and three years. In either case, it has failed to establish an essential element of its *prima facie* case, and summary judgment was properly granted. Moreover, in order for the Court to enforce an oral agreement, "The terms of a contract must be so clear, definite, certain, and precise, and free from obscurity or self-contradiction that neither party can reasonably misunderstand them, and the court can understand and interpret them, without supplying anything" *White v. Felkel*, 222 S.C. 313 (1952). Judged by that standard, the alleged oral agreement is unenforceable because Plaintiff itself cannot clearly articulate all the terms of the agreement.

Even if there had been some meeting of the minds regarding Mr. Garcia's employment, that is simply not sufficient to create an oral contract. First, Miguel Coves made a binding judicial admission that the term of employment was to be between two and three years. Thus, the agreement violates the statute of frauds because it is not set out in a writing signed by the party to be charged.¹ Second, Mr. Coves' attorney's affidavit further admits that both sides agreed that any agreement would be reduced to a written contract. (Affidavit of Michael

¹ S.C. Code Ann. § 32-3-10 provides that "No action shall be brought whereby . . . (5) to charge any person upon an agreement that is not to be performed in the space of one year from the making thereof unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized."

Liberatore, p. 2, ¶ 10). That allowed Mr. Garcia - and, indeed, Coves Darden - to withdraw any time before the agreement was signed. *Scaife v. Associated Air Ctr.*, 100 F.3d 406 (5th Cir. 1996) ("If parties negotiating a contract intend that the contract shall be reduced to writing and signed by the parties, . . . then either party may withdraw at any time before the written agreement is drawn up and signed by both parties."). In this case Mr. Coves clearly stated that the parties intended to execute a written contract. Indeed, Mr. Liberatore's affidavit claims that he specifically went over the written agreement with Mr. Garcia. As noted above, Mr. Garcia was free to withdraw at any time prior to the signing.

Even indulging in every inference favorable to Plaintiff, and even assuming that the parties had agreed on the various terms, that is simply not sufficient. As the Fourth Circuit noted in *Trademark Props., Inc. v. A&E TV Networks*, 422 Fed. Appx. 199 (4th Cir. 2011), deciding an appeal from the District Court of South Carolina:

"[W]here an alleged contract is oral, the party asserting its enforceability bears an even heavier burden of proving more than agreement on or acceptance of all material terms, but also overall agreement to be bound by the oral agreement without a writing. When the alleged contract is oral, more is needed than agreement on each detail to create a binding obligation. There must be overall agreement to enter into the binding contract." (Internal quotes and cites omitted).

There was nothing offered in opposition to the Motion for Summary Judgment creating a triable issue of fact that Mr. Garcia intended to be bound to an oral contract.

Additionally, the fact that the written contract contains a number of terms that are not contained in the alleged oral contract indicates that the oral discussions were really nothing more than negotiations. (Compare Affidavit of Miguel Coves, p. 2, ¶¶ 7 - 8, with the written contract,

Exhibit B to Motion for Summary Judgment). In fact, Michael Liberatore's affidavit indicates that it was the written contract, not some alleged oral agreement, that was read and explained to Mr. Garcia. Affidavit of Michael Liberatore, p. 2, ¶ 10:

"They had me prepare the written terms of employment to submit in support of the visa application subject to the final review of South Carolina legal counsel. * * * They had me go over the employment agreement with Ibanez on the phone, prepare him on the phone for the visa interview in Spain, and explain the limitations of the visa and the employment agreement to him. I discussed point by point each part of the employment agreement with Ibanez, as part of the interview prep. Immigration provides the Embassy with a complete copy of the immigration case file, including the employment agreement."

This further confirms that any oral discussions were simply negotiations and that both parties intended the written agreement to be the final embodiment of their agreement. See also the Affidavit of Miguel Coves, p. 3, ¶ 13: "In the course of applying for the visa, some common aspects of the agreement were reduced to writing and submitted to the immigration authorities as *the terms which would govern the employment* if the visa was granted." (emphasis added).

III. Other Arguments Raised in Motion to Reconsider

Plaintiff also sets out a lengthy litany of alleged errors or failure to consider evidence by this Court. Because they contain a number of factual misstatements, Defendants will address each of them briefly in the numbered order set out in Plaintiff's Motion:

1. Plaintiff first claims that, by citing to United States Supreme Court authority regarding Rule 56 standards the Court put a "federal gloss" on its ruling that, in some unexplained fashion, is contrary to South Carolina law. This argument ignores the fact that the South Carolina Supreme Court has itself cited to exactly the same cases as this Court, and for exactly the same propositions. *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208 (S.Ct. 2006) (citing

to *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242 (1986)); *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352 (S.Ct. 2007) (citing to *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). In short, federal law and South Carolina law are identical with respect to the issues for which they were cited by the Court.

2. See Statute of Frauds section above.

3. Plaintiff next argues that the Court erred in failing to consider that Plaintiff had gone beyond the oral contract and prepared a written contract. This argument is irrelevant in light of Plaintiff's denial of the existence of an oral contract and its admission that it has no written contract.

However, the presence of the written contract, even though it was not signed by Mr. Garcia, is important in another respect - it was signed by Mr. Coves on behalf of Coves Darden.

That written agreement contains the following language:

"THIS AGREEMENT is made effective as of the date that Mr. Francisco Garcia Ibanez (the "Employee") enters the United States of America with a valid 0-1 nonimmigrant visa enabling him to work for Coves Darden, LLC (the "Employer"). . . ."

"WHEREAS, the parties now wish to memorialize the terms and conditions of the employment in order to confirm that *an employer-employee relationship will in fact exist between the parties following the date that an 0-1 nonimmigrant work petition is approved by the Department of Homeland Security, and an 0-1 visa is issued to Mr. Garcia Ibanez;*

"WHEREAS, *this Agreement will define the terms and conditions of the employment between the parties;*

"WHEREAS, This Agreement is intended to serve as evidence of an *offer of employment*, in satisfaction of the requirements of the 0-1 nonimmigrant worker petition that Employer has filed for Employee." (emphasis added; Motion for Summary Judgment, Exhibit B)

This document, signed by Mr. Coves on behalf of Coves Darden, clearly indicates that all that existed at the time the written agreement was drafted was an *offer of employment*. As the sole signatory to this agreement, Coves Darden is bound by the admissions made therein. *Marshal v. Sims, Billups & Co.*, 1 McGl. 223 (La. App. 1881) ("He who approves of a contract vicious as to him, or executes it even partially, is estopped from subsequently disputing the contract, because of such vice."). Thus, as a signatory to the written contract, even though it is not fully executed, Coves Darden is bound by the admissions that all that was outstanding was an *offer of employment*. Plaintiff cannot bootstrap what it has previously admitted was nothing but an offer of employment into a binding oral agreement simply because the written agreement was never signed by Mr. Garcia. Indulging every inference in favor of Plaintiff, the Court is still left with the conclusion that any oral discussions that may have taken place were nothing more than preliminary discussions regarding what the terms of the written contract of employment would be. And since Plaintiff has already judicially admitted that there was no oral agreement, and has been unable to produce the slightest scintilla of evidence that the written contract was ever executed by Mr. Garcia, this Court correctly concluded that there was no contractual agreement between Coves Darden and Mr. Garcia and, therefore, properly granted summary judgment on that issue.

4. Plaintiff also argues that the Court failed to consider its interrogatory response and response to requests to produce "in the full, unexcerpted, context of the responses in the context of the deposition testimony of Defendant Ibanez himself, the Affidavit of Miguel Coves, and amended discovery responses all on file with the Court, and statements of counsel at various hearings." This ignores the fact that Defendants cited the court to the full unexcerpted citation to

the interrogatory response and the response to the request to produce. In fact, it was this Court's review of the entire record that led to the inevitable conclusion that Plaintiff had taken hopelessly contradictory positions regarding the nature of the agreement, and could not even consistently state the terms of the alleged oral contract.

5. Plaintiff next argues that the court misapplied the concept of judicial admissions. Plaintiff claims, without citation to any authority, that "an early interrogatory response in a case is *sometimes* admissible, but, contrary to the Court's apparent holding, does not permanently bind a party to an application of the response in a manner calculated to avoid the actual facts of the case for purposes of granting summary judgment." (emphasis added). There are several responses to this. First, a judicial admission *is* one of the facts of the case. In order to remove the admission from the case it is necessary for the admitting party to show good cause why the admission should be withdrawn, and a court order must be obtained. *See* 7-36 *Moore's Federal Practice* § 36.13; *see generally Collins Entm't, Inc. v. White*, 363 S.C. 546 (2005). And in *Meyer v. Berkshire Life Ins. Co.*, 372 F.3d 261 (4th Cir. 2004) the Fourth Circuit stated in a similar context:

"While it is commonly understood that the representations of parties to federal litigation may be binding in appropriate circumstances, courts have been diligent in preventing parties from gaining an improper advantage by withdrawing or distorting an earlier concession of fiduciary status under ERISA that was made, for example, to preempt a plaintiff's state-law claims. *See id.* at 559-60 (collecting cases); *see also Moench v. Robertson*, 62 F.3d 553, 560 (3d Cir. 1995) (rejecting defendants' efforts to re-characterize their unqualified concession of fiduciary status at summary judgment and explaining that 'the [defendants are] changing course when [they] now argue[]...that [they were] simply not an ERISA fiduciary in the relevant capacity. We will not permit this.') (emphasis added)."

Next, the rules do not distinguish between an early admission and an admission made

later in the case. Thus, the fact that the admission may have been made in responding to the first round of discovery is completely irrelevant. Additionally, late in this case, and after the Motion for Summary Judgment was pending, Mr. Coves filed an affidavit attesting to the continuing existence of an alleged written contract. ("Ibanez breached his contract with us. He breached the written agreement which he knew existed, and he breached the underlying agreement we had clearly reached before the contract was even written up." (Affidavit of Miguel Coves, p. 7, ¶ 33)). Finally, it is important to note that the about face arguing for the existence of an oral agreement was not made until after the motion for summary judgment had been filed. As noted by this Court, contradictory affidavits filed after a motion for summary judgment has been filed may be disregarded. *Cothran v. Brown*, 357 S.C. 210 (S.C. 2004) ("[A] court may disregard a subsequent affidavit as a 'sham,' that is, as not creating an issue of fact for purposes of summary judgment, by submitting the subsequent affidavit to contradict that party's own prior sworn statement.")

6. Plaintiff also argues that "the proposed order signed by the Court mistakes plaintiff's earlier response that the contract was "written rather than oral," as a statement that no oral contract existed in the absence of a written contract" Of course, Plaintiff fails to cite its clear and unequivocal admission in its interrogatory response that "*The agreement was not oral*. It was a written contract presented to and acknowledged by Ibanez in (sic) or before January of 2012, after August of 2011." (emphasis added; Motion for Summary Judgment, Exhibit A). There is nothing ambiguous about that statement. Plaintiff never moved to retract the statement before the dismissal was entered, and is bound by that admission.

Plaintiff also misstates the admission that there was no written contract, twisting the

response so that it should be interpreted as saying there was no written contract in its possession. Again, that is not what the response said. It clearly said "For Defendants' information, Defendant [sic, Plaintiff] believes there are none currently responsive to Request 1 (if requesting one with Ibanez's signature.)." (Motion for Summary Judgment, Exhibit A). The assertion that this response should be interpreted to mean that it was not an admission that there was no signed written contract anywhere in the world is again irrelevant. If there was a signed written contract, then it was Plaintiff's burden to produce it in opposing summary judgment. This Court is not required to let this case sit in limbo, and force the Defendants to incur additional time and expense because there may or may not be a signed copy somewhere in the world.

7. Plaintiff's next argument is confusing. Plaintiff seems to be arguing that at-will employment is contractual in nature and, therefore, Plaintiff can maintain a claim for breach of the at-will employment relationship. Of course, this argument misses the point. Even if at-will employment is considered contractual in nature, and regardless of whether the employer/employee relationship is based on an oral or a written agreement, the law in South Carolina is very clear that an employment at will can be terminated by either party for any reason, or for no reason whatsoever. *Prescott v. Farmers Tel. Coop., Inc.*, 335 S.C. 330, 334 (1999). The ending of an at-will employment relationship does not give rise to a cause of action for breach of contract. *Hudson v. Zenith Engraving Co., Inc.*, 273 S.C. 766, 259 S.E.2d 812 (1979).

8. Plaintiff further claims that this Court ignored black letter law that every employee owes fiduciary duties to an employer. However, Plaintiff has not, and cannot, point to any "black letter law" standing for the broad proposition it asserts. As this Court has previously noted, the only South Carolina cases finding a fiduciary relationship dealt only with high level

managerial employees, and no South Carolina case has found a fiduciary relationship between an employer and a non-managerial employee, let alone one at-will.

9. None of the "facts" set out in this section even remotely create a triable issue of fact regarding the existence of a fiduciary relationship. In fact, as set out in the Complaint, Mr. Garcia was hired to act as "an equestrian trainer, and to provide expert instruction and consultancy services for clients of Plaintiff." (Complaint, ¶ 7). There is no mention, let alone citation to specific facts, demonstrating an issue as to whether Mr. Garcia was the type of high level employee for whom a fiduciary relationship would be imposed.

There is a more fundamental reason for finding no fiduciary relationship: the concept is fundamentally contrary to the concept of at-will employment, at least in the case where the alleged breach is simply quitting. The only allegations of wrongdoing in the Complaint are that Mr. Garcia failed to appear for work the day before a competition that had been scheduled for months was to take place (Complaint ¶¶ 16, 17). Of course, if an at-will employee can quit for no reason whatsoever, *Prescott, supra*, then quitting for a reason that may have caused some inconvenience or expense to the employer cannot possibly constitute an even arguable breach of fiduciary obligations. According to the Complaint, all that Mr. Garcia did was fail to show up for work one day and go to work for a competitor. That does not even remotely create an issue of fact regarding breach of fiduciary obligations, assuming such obligations even existed in the first place, which they did not.

10. Plaintiff next complains that the Court erred in not finding at least some triable issue of fact regarding tortious interference with prospective economic advantage, which Plaintiff argues does not require the existence of a contract. What this argument ignores, however, is the

fact that Plaintiff's Complaint did not seek recovery for tortious interference with prospective economic advantage. This claim appears for the first time in this Motion for Reconsideration and is not properly before this Court. A party cannot use a Rule 59(e) motion to present an issue to the court that could have been raised prior to judgment but was not so raised. *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19 (2005). Indeed, an action for interference with prospective economic advantage cannot be maintained based on the breach of an existing contract. *Fellhauer v. City of Geneva*, 142 Ill. 2d 495 (1991); Restatement (Second) of Torts § 766B comment a (1979) ("This Section is concerned only with intentional interference with prospective contractual relations, not yet reduced to contract.).

Plaintiff's Motion for Reconsideration recognizes that a claim for tortious interference with contract requires the existence of a contract. What Plaintiff fails to recognize, however, is that there was a total failure of proof regarding the existence of a contract. Moreover, this Court found that there had been no evidence establishing a triable issue of fact regarding Defendant Derr's intentional and malicious procurement of the breach.

11. Finally, Plaintiff claims that the Court erred in granting summary judgment on the Unfair Trade Practices Act claim. Plaintiff has previously admitted that the two statements on which this claim was based were true, "under one understanding of the word 'sabbatical', and in the further sense that Ibanez is now based at Half Moon". (Brief of Plaintiff in Opposition to Defendants' Renewed Motion for Summary Judgment, p. 48). However, Plaintiff never offered an alternate interpretation that would have rendered them false, deceptive or unfair.

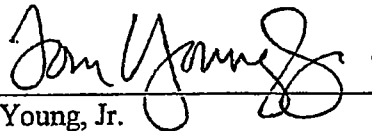
Additionally, Plaintiff asserts that a claim for tortious interference can support an SCUPTA claim. Nothing could be further from the truth. To maintain a private cause of action

under SCUTPA, a plaintiff must establish: (1) the defendant engaged in an unlawful trade practice; (2) the plaintiff suffered actual, ascertainable damages as a result of the defendant's use of the unlawful trade practice; and (3) the unlawful trade practice engaged in by the defendant had an adverse impact on the public interest. *Daisy Outdoor Advertising Co. v. Abbott*, 322 S.C. 489, 473 S.E.2d 47, 49 (S.C. 1996); *Havird Oil Co. v. Marathon Oil Co.*, 149 F.3d 283, 291 (4th Cir. 1998). By definition, a tortious interference claim only involves the relationship between the employer and employee and only indirectly impacts members of the public. "While every private dispute doubtless has remote public ramifications, these cannot be held to satisfy the element of injury to the public interest which is a prerequisite to any recovery under the UTPA. Were the rule otherwise, every ordinary commercial dispute would become a candidate for the extraordinary remedies provided by the Act." *Bessinger v. Food Lion, Inc.*, 305 F. Supp. 2d 574 (D.S.C. 2003).

CONCLUSION

For the reasons stated herein, this Court should deny the Plaintiff's Motion to Reconsider.

Respectfully Submitted,



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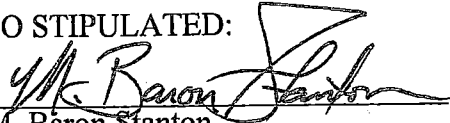
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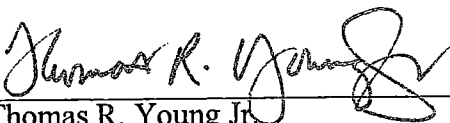
Stipulation to Inclusion of Less Than All Matter Originally Designated

STIPULATION TO INCLUSION OF LESS THAN ALL
MATTER ORIGINALLY DESIGNATED

The parties to the appeal hereby stipulate to not including Item 3 of Respondents' Designation, and the Summons in Item 4 of Respondents' Designation, and in clarification of Item 11 of Respondents' Designation, stipulate to include Exhibits B and C to Defendants' memorandum in support of summary judgment, dated February 28, 2013.

SO STIPULATED:


M. Baron Stanton
Attorney for Appellant


Thomas R. Young Jr.
Attorney for Respondents

Certificate of Counsel

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not subsequently changed by agreement, and no other material.



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ATTORNEY FOR APPELLANT
COVES DARDEN, LLC

Date: October 29, 2014

APPENDIX DIVIDER

F

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

Coves Darden, LLC, Appellant,

v.

Francisco Jose Garcia Ibañez, Dori Derr, and Half Moon
Stables, LLC, Respondents.

Appellate Case No. 2014-000339

Appeal From Aiken County
Doyet A. Early III, Circuit Court Judge

Unpublished Opinion No. 2016-UP-402
Heard December 10, 2015 – Filed August 17, 2016

AFFIRMED

M. Baron Stanton, Stanton Law Offices, P.A., of
Columbia, for Appellant.

Thomas Roy Young Jr., Law Offices of Tom Young, Jr.,
PC, of Aiken; and James M. Derr, of Saint Thomas, U.S.
Virgin Islands, for Respondents.

Darden soon discovered Ibañez was registered to enter a different competition for Dori Derr, an owner of Half Moon Stables—a competitor of Coves Darden.

Coves Darden filed a complaint against the respondents, asserting claims of breach contract and breach of fiduciary duty against Ibañez, tortious interference with a contract against Derr, and violations of the South Carolina Unfair Trade Practices Act against Derr and Half Moon. During discovery, the respondents sent Coves Darden an interrogatory asking for "the terms and conditions of any alleged oral agreement with . . . Ibañez with respect to the terms and conditions of his employment." Coves Darden responded, "The agreement was not oral. It was a written contract presented to and acknowledged by Ibañez in or before January of 2012, after August of 2011. It states the terms and conditions of the employment contract It may or may not have been countersigned by him." However, in response to the respondents' request for Coves Darden to "produce the fully executed employment contract," Coves Darden stated it "believes there are none currently responsive" to the request.

The respondents moved for summary judgment as to all claims, and the circuit court held three hearings on the respondents' motion. On the day of the second hearing, Coves Darden filed an amended response to the respondents' interrogatory, explaining "the parties reduced the common terms of the agreement to writing. The written document may or may not have been countersigned by Ibañez. . . . Upon information and belief, the written document was presented to and acknowledged by Ibañez in or before the time of his visa interview in February of 2012." After the third summary judgment hearing, the circuit court issued an order granting summary judgment in favor of the respondents as to all of Coves Darden's claims.

II. Issues on Appeal

- (1) Whether the circuit court erred in granting summary judgment in favor of Ibañez as to Coves Darden's breach of contract claim;
- (2) Whether the circuit court erred in granting summary judgment in favor of Ibañez as to Coves Darden's breach of fiduciary duty claim;
- (3) Whether the circuit court erred in granting summary judgment in favor of Derr as to Coves Darden's tortious interference with a contract claim; and

signed by both parties if the contract is accepted by the party who did not sign, *see, e.g., Peddler, Inc. v. Rikard*, 266 S.C. 28, 32, 221 S.E.2d 115, 117 (1975) ("It is not always necessary, in order to give validity to a contract, that it should be signed by both parties; it may be sufficient if it be signed by one party and accepted, held, and acted upon by the other." (citation omitted)), there is no evidence in the record that Ibañez agreed to the written contract. The only evidence connecting Ibañez to the written contract is an affidavit from an immigration lawyer stating Coves Darden "had me go over the employment agreement with Ibañez on the phone . . . and explain the limitations of the visa and the employment agreement with him. I discussed point by point each part of the employment agreement with Ibañez, as part of" Ibañez's preparation for his visa interview with U.S. authorities in Spain. The affidavit did not state Ibañez agreed to or accepted the terms of the written agreement.

Alternatively, Coves Darden claims the parties entered into an oral contract. There is evidence in the record supporting Coves Darden's claim. Miguel Coves filed an affidavit in which he stated, "We entered into an agreement to employ Ibañez to act as an expert equestrian trainer," and described the terms of the agreement. Similarly, Ibañez testified in his deposition that Coves Darden offered him employment, and he explained the same terms Miguel Coves described in his affidavit. He testified during the deposition that in January 2011—after multiple visits to South Carolina—he accepted the proposed terms:

Q: Did you discuss any differences between the two of you over the terms that would be acceptable?

A: No. We continue[d] with the same agreement.

Q: Did you accept the proposed terms on that visit?

A: Yes.

According to Miguel Coves's affidavit, Coves Darden did not begin the visa application process—which included reducing "common aspects of the agreement . . . to writing" to submit to immigration authorities—until after Ibañez accepted the terms of the oral agreement.

Viewing the oral agreement in the light most favorable to Coves Darden, we find the parties agreed to the following terms: Coves Darden would pay Ibañez about \$8,000 per month, furnish him a house and car, provide insurance for Ibañez and

leave of absence from his previous job, and the stated desires and agreement of the parties.²

Coves Darden also directs the court to parts of Miguel Coves's affidavit—in particular paragraph 6—which stated,

We entered into an agreement to employ Ibañez to act as an expert equestrian trainer, and to provide expert instruction and consultancy services in the equestrian arts for clients of Coves Darden Farm. We both acknowledged and expected the relationship to continue for at least two years. The probable expected initial length of the visa was three years, and his likely initial leave of absence from his prior employment relationship was to be two years.

We find the oral contract violated the statute of frauds. The statute of frauds provides a contract that cannot be performed within one year is unenforceable unless it is in writing and signed by the party against whom enforcement of the contract is sought. *Springob v. Univ. of S.C.*, 407 S.C. 490, 495, 757 S.E.2d 384, 387 (2014) ("[T]he Statute of Frauds requires that a contract that cannot be performed within one year be in writing and signed by the parties." (alteration in original) (citation omitted)); *see also* S.C. Code Ann. § 32-3-10 (2007) ("No action shall be brought whereby . . . (5) To charge any person upon any agreement that is not to be performed within the space of one year from the making thereof; Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith"). However, "[i]f there is a possibility that a contract might be performed within one year, the statute of frauds is not a bar to enforcement of the contract." *Springob*, 407 S.C. at 495-96, 757 S.E.2d at 387.

Contrary to Coves Darden's argument, the contract would not be removed from the statute of frauds even if the visa was granted for less than one year. For a contract to be exempt from the statute of frauds, it must be possible that the contract as agreed to can be *performed* within a year. *Id.*; *see also Roberts v. Gaskins*, 327 S.C. 478, 484, 486 S.E.2d 771, 774 (Ct. App. 1997) ("It is . . . well established that the Statute of Frauds applies only to contracts which are impossible of

² The interrogatory answer is not verified. *See* Rule 33(a), SCRCP ("Each interrogatory shall be answered separately and fully in writing under oath").

The circuit court found "there are no fiduciary duties of loyalty owed by a non-contractual, non-fiduciary employee subject only to the rules for common law at-will employment." The court stated, "South Carolina cases finding a cause of action for breach of the duty of loyalty have all involved upper level managerial employees." We agree with the circuit court. We can find no South Carolina authority providing all employees are agents of their employers and owe their employers fiduciary duties. Although it may be true that Ibañez had specialized skills and a close, familial relationship with Miguel Coves, that does not give rise to fiduciary duties. The record contains no evidence Ibañez indicated to Coves Darden that he would put Coves Darden's interests before his own. Rather, the record indicates only that Coves Darden unilaterally placed trust and confidence in Ibañez and that Ibañez agreed to work for Coves Darden. The unilateral actions of an employer do not create a fiduciary duty in its employees. See *Burwell v. S.C. Nat'l Bank*, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986) ("The term fiduciary implies that one party is in a superior position to the other and that such a position enables him to exercise influence over one who reposes special trust and confidence in him. As a general rule, mere respect for another's judgment or trust in his character is usually not sufficient to establish such a relationship. The facts and circumstances must indicate that the one reposing the trust has foundation for his belief that the one giving advice or presenting arguments is acting not in his own behalf, but in the interests of the other party." (citation omitted)). We affirm the circuit court's granting of summary judgment as to this issue.

V. Tortious Interference with a Contract

Coves Darden argues the circuit court erred in granting summary judgment as to its tortious interference with a contract claim because an at-will contract is still a contract and a question of fact exists as to whether Derr tortiously interfered with Coves Darden's contract with Ibañez.

To succeed on a claim of tortious interference with contract, a plaintiff must prove five elements: "(1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages." *Dutch Fork Dev. Grp. II, LLC v. SEL Props., LLC*, 406 S.C. 596, 604, 753 S.E.2d 840, 844 (2012). "Where there is no breach of the contract, there can be no recovery." *Eldeco, Inc. v. Charleston Cty. Sch. Dist.*, 372 S.C. 470, 481, 642 S.E.2d 726, 732 (2007). In its summary judgment order, the circuit court ruled the lack of a breach of Ibañez's contract "alone is fatal to [Coves Darden]'s claim." We agree with the circuit court.

engage in a deceptive act. Second, Coves Darden argues the advertising was deceptive because it did not disclose to the public that Ibañez originally came to the United States to work for Coves Darden, not Half Moon. However, Coves Darden has offered no evidence to explain how that information affects any member of the public. Accordingly, we affirm the granting of summary judgment as to this issue.

VII. Conclusion

The circuit court's granting of summary judgment in favor of the respondents is **AFFIRMED**.

LOCKEMY, C.J., concurs.

KONDUROS, J., concurring in part and dissenting in part: I agree with the majority's decision to affirm the circuit court's grant of summary judgment on the fiduciary duty and unfair trade practices causes of action. However, I respectfully disagree with the majority as to the issues of breach of contract and tortious interference of a contract.

I. Interrogatory Response

Initially, I agree with Coves Darden's contention the circuit court erred in its treatment of Coves's interrogatory answer as an admission.³ Coves Darden contends the circuit court erred in applying the wrong standard for a summary judgment decision by disregarding contradictory evidence, considering an unsworn interrogatory response to be a judicial admission, and considering an unsworn interrogatory response to be an affidavit rendering a subsequent affidavit a sham.

"In determining the sufficiency of responses to interrogatories, each answer must be read in the light of the question asked. Absent any specification, the interrogatory should be construed as seeking current information as of the time the question is asked and answered." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 108, 410 S.E.2d 537, 541 (1991) (citations omitted). A request for admissions is governed by a different rule than interrogatories. *See* Rules 33 & 36, SCRPC;

³ Despite this decision, the circuit court made alternate findings as to the validity of an oral contract. Presumably, the majority does not directly address this issue because of those alternate findings.

Additionally, I believe the circuit court erred in determining at the summary judgment stage any oral agreement violated the statute of frauds and any written contract was not signed by Francisco Jose Garcia Ibañez.⁴

A. Statute of Frauds

"[T]he Statute of Frauds requires that a contract that cannot be performed within one year be in writing and signed by the parties.' If there is a possibility that a contract might be performed within one year, the statute of frauds is not a bar to enforcement of the contract." *Springob v. Univ. of S.C.*, 407 S.C. 490, 495-96, 757 S.E.2d 384, 387 (2014) (quoting *Davis v. Greenwood Sch. Dist.* 50, 365 S.C. 629, 634, 620 S.E.2d 65, 67 (2005)). Therefore, "[t]o satisfy the Statute of Frauds, every essential element of the contract must be expressed in a writing signed by the party to be compelled." *Fici v. Koon*, 372 S.C. 341, 346, 642 S.E.2d 602, 604 (2007)). "The burden of proof is on the party seeking to enforce the contract." *Id.* "The elements required to satisfy the statute of frauds in order to have a valid employment contract are: (a) compensation; (b) determinable duration (an initial starting date and date of termination); (c) reciprocal rights, duties, and obligations; and (d) a written instrument if contract not to be performed within one year." *Young v. Indep. Pub. Co.*, 273 S.C. 107, 110, 254 S.E.2d 681, 682 (1979).

[T]he Statute of Frauds applies only to contracts which are impossible of performance within one year. A contract having *a contingency which may occur within the year* need not be supported by a written document. If there is a *possibility* of performance within a year, the contract is not barred by the Statute of Frauds. The fact that performance within a year is highly improbable or *not expected* by the parties does not bring a contract within the scope of this clause.

Roberts v. Gaskins, 327 S.C. 478, 484, 486 S.E.2d 771, 774 (Ct. App. 1997) (emphases added) (citations omitted).

[When] there is a contingency expressed upon the face of the contract, or implied from the circumstances, upon the happening of which within a year the contract or

² We refer to him as Garcia because his counsel indicates that is the proper way to refer to him.

parties thereto are relieved from performing the unperformed obligations of the contract. Performance, on the other hand, means compliance with the obligations of the contract and the fulfillment thereof. It follows, therefore, that the annulment of a contract and its performance are distinctly different conceptions, and that, although the parol contract in issue might be annulled within a year, it was none the less a contract, the performance of which required three years.

Id. at 618-19.

I would find the contract could be performed in a year. The letter from Coves to Homeland Security in support of the visa application stated Coves Darden "will employ Mr. Garcia . . . for a term of three (3) years, *or for such period as is authorized by [USCIS]*." (emphasis added). The letter also states Coves Darden "has informed Mr. Garcia . . . of the temporary nature of this employment, and Mr. Garcia . . . has accepted this condition. [Coves Darden] will not employ [Garcia] beyond his authorized period of stay." The visa could have been issued for less than one year, and if it had, Coves Darden would have employed Garcia for less than a year. I believe this is different from an excusable nonperformance or termination of the contract like that described in *Street*. Unlike the majority, I believe the term of the visa was a contingency contemplated by the contract, not that it would prevent the contract from being fully performed if it were to occur. Here, the contract did not provide it would no longer be in force or effect if the visa was only provided for less than one year; it specified that the employment would only last as long as the visa term. Garcia would still perform the responsibilities in the agreement, just for a shorter period of time than hoped for by the parties. Accordingly, the contract could have been performed in less than one year and thus is not barred by the statute of frauds. See *Weber v. Perry*, 201 S.C. 8, 11, 21 S.E.2d 193, 194 (1942) ("Where under the terms of an oral agreement an employment is to cease upon a contingency which may happen within a year, the oral agreement is not within the statute of frauds." (quoting 27 C.J. 188)). Therefore, I believe the circuit court erred in granting summary judgment on the breach of contract cause of action.

B. Written Contract

"[W]hen a contract signed by one party only is accepted by the other party, it becomes binding upon both just as if it were signed by both." *Jaffe v. Gibbons*,

Accordingly, I believe the contract could be enforced if Coves signed it and Garcia acquiesced. The record contains some evidence Garcia assented in that he moved from Spain, lived in a house and used a car both provided by Coves Darden, and performed in a competition on behalf of Coves Darden. *See id.* ("A written contract, *not required to be in writing*, is valid if one of the parties signs it and the other acquiesces therein. Acceptance of a contract by assenting to its terms, holding it and acting upon it, may be equivalent to a formal execution by one who did not sign it. . . . If a person accepts and adopts a written contract, even though it is not signed by him, he is deemed to have assented to its terms and conditions and to be bound by them." (quoting 6 R.C.L. at page 641)). Additionally, Garcia testified he had an agreement with Coves Darden, and he acted on it by moving to South Carolina, working at Coves Darden, and competing on its behalf. *See Jaffe*, 290 S.C. at 473, 351 S.E.2d at 346 ("A contract does not always require the signature of both parties; it may be sufficient, if signed by one and accepted and acted on by the other."). Accordingly, I would find the circuit court erred in granting summary judgment on the breach of contract cause of action by finding there was no written contract and the issue should have been submitted to the jury.⁵

⁵ Respondents argue Coves Darden asserts for the first time on appeal there is some possibility of performance of the employment agreement within a year. Because I would reverse this issue on the merits, I believe I need to express that I would find the argument is preserved. The possibility of performance in a year due to the USCIS granting the visa for less than one year was raised to the circuit court in Coves Darden's opposition to Respondents' statute of frauds argument. The proceedings before the circuit court were less than clear in terms of the summary judgment motion. Coves Darden raised this exception as soon as it became aware Respondents were asserting an oral contract would violate the statute of frauds. Respondents did not raise the statute of frauds in their first or second motion for summary judgment or the memorandum referenced in the motions. The circuit court first raised the statute of frauds at the second summary judgment hearing; it had not been raised at the prior hearing. Coves Darden responded that Respondents had not pled the statute of frauds, which is an affirmative defense, and also that "there are exceptions to the statute of frauds." It further stated "there are a number of exceptions, and one is, that the statute of frauds only applies if it was impossible, impossible to perform this agreement within the space of one year. . . . [I]f [USCIS] revoked the visa for any reason, then obviously they could not continue to employ him. So all of that was built into the agreement." Coves Darden also filed a document in opposition to the statute of frauds argument asserting the same. Based on this, I would find Coves Darden's argument the

The circuit court also found Coves Darden had not presented any reasonable evidence Derr intentionally procured the breach. Derr testified at her deposition she had asked Garcia if he had a contract with Coves Darden. She indicated Garcia told her he had asked for a copy of the contract from Coves but Coves would not provide it to Garcia. She stated Garcia indicated the only time he saw a contract was when Coves waved it in his face and told him the contract prohibited him from speaking to competitors, which was after Coves had seen Garcia at Half Moon. Derr further testified Half Moon would not hire Garcia unless it could obtain a visa for him. She indicated Half Moon could not have hired or paid him until his visa was approved. Although Derr never saw a written contract between Coves Darden and Garcia, her testimony indicates she had some knowledge Coves Darden and Garcia believed that one existed. Further, Coves indicated in his affidavit that due to the short amount of time between Garcia leaving the employment of Coves Darden and entering competitions on Half Moon's behalf, the negotiations must have started while Garcia was still working for Coves Darden. Accordingly, I believe a question of fact exists as to whether Derr intentionally procured the breach.

The circuit court also found a privilege exists for those who offer employment to at-will employees of their competitors. However, because an issue exists as to whether Coves Darden and Garcia an employment contract, not just an at-will relationship, this privilege does not apply. Accordingly, I would reverse the grant of summary judgment on this cause of action.⁶

⁶ Coves Darden also asserts the circuit court erred in granting summary judgment on this cause of action because a third party cannot assert the statute of frauds as a defense. *See Bocook Outdoor Media, Inc. v. Summey Outdoor Advert., Inc.*, 294 S.C. 169, 177, 363 S.E.2d 390, 394 (Ct. App. 1987) (holding a stranger to an agreement cannot assert the statute of frauds), *overruled on other grounds by O'Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993); *Hatcher v. Harleysville Mut. Ins. Co.*, 266 S.C. 548, 553, 225 S.E.2d 181, 183 (1976) ("[T]he protection afforded by the statute of frauds is a personal privilege of the parties to the agreement, and a stranger to an oral contract cannot avail himself of the fact that the statute of frauds renders the contract unenforceable." (citation omitted)). Because I believe the circuit erred in granting summary judgment on this cause of action because there was not contract, I would not reach this argument. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

APPENDIX DIVIDER

G

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 12-CP-02-01772

Coves Darden, LLC, ... Appellant,

v.

Francisco Jose Garcia Ibañez, Dori Derr and Half Moon Stables, LLC, ... Respondents.

PETITION FOR REHEARING
(With Suggestion for Rehearing En Banc)

Appellant Coves Darden moves, pursuant to Rule 221(a), SCACR, that the court rehear the case, grant oral argument, vacate the unpublished opinion (No. 2016-UP-402, filed August 17, 2016), and issue a published opinion reversing the Circuit Court's order granting Defendants-Respondents' motion for summary judgment. Coves Darden respectfully suggests rehearing en banc, pursuant to Rule 219, SCACR.

The grounds for this motion, respectfully submitted, are that the Court overlooked the evidence in the record, possibly misapprehended some facts it did examine, and was guided in doing so by overlooking some of the law on point and some of the thirteen issues in the appeal.

To wit:

1. The Court overlooked or erroneously disregarded the Supplemental Interrogatory Response dated October 9, 2013 in the Record at 453;
2. The Court overlooked or failed to apply the summary judgment standard, including the “scintilla” rule and the prohibition on the court taking its own view of the facts;
3. The Court misunderstood or incorrectly considered the time sequence of formation of the contract, determining the actual length of validity of the visa, and commencement of work;
4. The Court applied out-of-state or generalized treatise propositions in lieu of South Carolina authority to the contrary;
5. The Court appears to propose a change in the general and South Carolina law of agency;
6. The Court failed to rule on the Circuit Court’s errors in applying concepts of judicial admission and sham affidavit, and additionally did not rule on the underlying factual or legal issues in the arguments on those issues, such as the genuineness of disputes presented, and the reasonableness of any inferences urged;
7. The Court failed to recognize or rule upon the presented issue of whether an agreement between an employer and an employee for employment at will is still a contract, breach of which is still actionable, although termination alone is not a breach and is not actionable;

8. The Court failed to rule upon the presented issue of whether the statute of frauds can be raised as a defense by a third party, who is not a party to the contract, in an action against that party for tortious interference with contract;
9. The court failed to rule upon the presented issue of whether a contract terminable at will can support a claim for tortious interference with contract or tortious interference with prospective advantage;
10. The Court failed to rule on the issue of the significance to claims of tortious interference with prospective advantage and violation of the Unfair Trade Practices Act, of inducing another's employee to breach his contract by offering him an illegal compensation agreement or facilitating the same;
11. The Court failed to rule on the presented issue of whether the UTPA applies to traditionally proscribed anticompetitive behavior; and
12. For compound reasons, the Court incorrectly affirmed summary judgment on the breach of contract, breach of fiduciary duty, tortious interference, and UTPA counts of the complaint.

Coves-Darden also respectfully submits that the form of the opinion does not comply with the South Carolina Appellate Court Rules. It is possible that this is the reason why some of the issues and law were overlooked. While the opinion addresses some of the larger issues, it does not discretely identify and decide all the thirteen issues presented and actually argued in the briefs. While not explicitly required by appellate court rule, the opinion also does not recite the facts of the case in the light most favorable to the party opposing summary judgment, which would seem necessary to view the issues in the context fairly arising upon the record of the court.

Finally, the opinion should not be designated as unpublished and without precedential

value because it does not meet any of the requirements of statutes passed by the General Assembly pursuant to constitutional authority to prescribe laws pertaining to the issuance and publication of decisions. The opinion also does not meet the requirements of Rule 220, SCACR.

MEMORANDUM OF ARGUMENT FOR REHEARING, WITH
CITATION OF AUTHORITY

1. Recap of Portions of Nature and Background of the Case

This appeal presents an instance in which the defendants filed two motions for summary judgment in which no grounds whatsoever were stated. No supporting affidavits or depositions were filed. Three hearings were held while Plaintiff Coves Darden, the nonmoving party on summary judgment, moved to compel discovery from the moving party. The Circuit Court granted summary judgment on all counts of the complaint, and dismissed the entire case. Coves Darden appealed the grant of summary judgment. This Court affirmed in a twenty-page opinion consisting of roughly 10 pages of majority opinion and 10 pages of mostly dissenting opinion, all designated as “unpublished.”

The case in Circuit Court arose as follows. Defendant Ibanez, who lived and worked in Spain, agreed to temporary employment in which he would train and show the horses of Coves Darden, which is located in the United States. This employment required Coves Darden to first secure a work visa for Ibanez allowing him to enter and temporarily remain¹ in the U.S. for that purpose. The employment required Ibanez to temporarily move from Spain to Springfield, S.C., near Aiken.

¹ It is not clear that on appeal, this Court understood the visa process and the effect of the visa. The nonimmigrant visa is not simply permission to work while in the U.S., it is permission to enter and be in the U.S. The nonimmigrant alien cannot come into the U.S. for the purpose of the work without getting the visa first. When the visa expires, the visa holder does not simply have to quit working. The visa holder has to leave.

After numerous expenditures by Coves Darden, trips by Ibanez as a visitor to Coves Darden's farm, and other events, Ibanez came to the U.S. for the employment and commenced work.

A few months after moving to Coves Darden's farm, Ibanez, who was employed by Coves Darden at about \$96,000 a year plus perks, began clandestine visits to Half Moon Stables, a competitor run by Dori Derr. He rode her horse, collected no money for Coves Darden, and secretly agreed to compete for her in upcoming horse competitions. Unbeknownst to Coves Darden, around this time, she agreed to a future employment arrangement with him in which she would facilitate his making extra money from other activities in violation of his visa status.

About four months after commencing work for Coves Darden, on the eve of a horse competition which had been planned for weeks or months,² and on which resources had been committed and money had been spent, Ibanez disappeared from Coves Darden's farm. He left a note in the house which had been provided by Coves Darden for him and his family, that he was quitting with no notice. The day before, he had expressly assured Coves Darden that everything was in order for the competition.

After discovering the circumstances, Coves Darden sued Ibanez for breach of contract and breach of the fiduciary duties of (1) loyalty, (2) honesty, and (3) information, sued Derr for tortious interference with contract, and sued Derr and Half Moon for unfair methods of competition or unfair or deceptive acts or practices in the conduct of trade or commerce.

The aforesdescribed summary judgment proceedings, Circuit Court order granting

²The majority opinion erroneously states that the event was planned four months after Ibanez started work, when to the contrary, like most such competitions, it had been planned much earlier. This may be the effect of unintended syntax of the majority opinion's sentence, but it is difficult to tell.

summary judgment, and appeal followed.

This Court held oral argument and issued a twenty-page opinion including a ten-page dissent. The opinion bears the heading, "THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR."

Coves Darden's appellate briefs to this Court presented the background and procedural facts, the scope and standard of review, the facts viewed in the light most favorable to the nonmoving party on summary judgment, at least fifty-nine cases, four or more treatises or secondary resources, and numerous statutes, rules or other authorities.

Coves Darden discussed at length, in the form of thirteen issues presented on appeal, the burdens on the moving party in summary judgment, the true nature of judicial admissions, the evidence in the record, the South Carolina law applicable to the statute of frauds defense, the true contractual nature of employment at-will, the scope of defenses to the claim of tortious interference with contract and prospective contract, the scope of the Unfair Trade Practices Act and its 1930s prototype, illegal compensation agreements under the U.S. immigration and nationality laws, and the definition of deceptive advertising.

These issues were distinctly stated as follows:

1. When a defendant moves for summary judgment without filing any accompanying materials and without stating any grounds in the written motion, does the nonmoving party have a burden to come forward with details on every possible element and piece of evidence in the case in response to evolving briefs and materials thereafter filed by the moving party?
2. What is a "judicial admission," and does it conclusively establish a matter for purposes of summary judgment?
3. Was there a question of fact, precluding summary judgment, as to whether there was a written contract?
4. Was there a question of fact, precluding summary judgment, as to whether there was a reasonably detailed oral contract between the parties, notwithstanding any lack of a written contract?
5. If the contract was oral, was there a question of fact, precluding summary

judgment, as to whether it was impossible to have been performed within one year?

6. Does the existence of remaining unresolved factual issues as to whether a contract is written or oral require entry of summary judgment that there was no contract at all?

7. Even if there had been neither a written contract nor an oral contract with specific agreed terms beyond a general employment-at-will contract, was it error to determine that a high-level, highly trusted employee brought over from another country to live on the premises of his employer owed no fiduciary duties?

8. Even if there had been no written contract, nor detailed oral contract, would a general employment-at-will contract support a claim for either tortious interference with contract or tortious interference with prospective advantage?

9. Was there evidence of interfering in the contract?

10. Was justification for the interference established as a matter of law?

11. Was a written contract or detailed oral contract a necessary element of a claim for violation of the South Carolina Unfair Trade Practices Act?

12. Would inducing the employee of another to both breach fiduciary duties to his employer and breach or end his employment with his employer by offering him an illegal compensation arrangement not offered by the present employer present "impact on trade or commerce" ("public impact") for purposes of a claim under the SCUTPA, either by presenting a conventional anticompetitive tort, a potential for repetition, or other type of public impact?

13. Does misleading advertising following tortiously interfering with a contract compound the violation of the SCUTPA?

(Appellant's Brief, "Statement of Issues on Appeal," at 1-2.)

2. Introduction to Argument and Discussion

"In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case." Rule 220 (b), SCACR. This Court did not decide every point necessary to decision. This is discussed further below.

To reduce some repetition, Coves Darden's forty-three page Appellant's Brief and Reply Brief are respectfully incorporated herein, without full re-briefing, as an argument on the thirteen points distinctly stated in the case and asked to be re-decided now on rehearing.

It is respectfully submitted that the overarching, but not exclusive, oversight in the opinion is that the majority opinion somehow overlooked, and never cited, the standing

“scintilla” standard in South Carolina for deciding summary judgment.

This confirmed standard is certainly at odds with the majority’s opinion.

It is respectfully submitted that the majority also overlooked the manner in which to apply that standard to the materials in the record, including the materials submitted in opposition to the motion. The opposition materials which were seemingly disregarded or misunderstood were all allowed by rule to be submitted, particularly where, as here, the moving party fails in its own burden to submit them.

The opposition materials are required by the rule of law to be considered, and are required by the constitutional right to jury trial, to be considered. Summary judgment is a decision only of law, not of facts, and is issued only when it is believed there are no facts to decide. The materials which were disregarded included the 10-9-13 Supplemental Interrogatory Response in the Record at page 453. And there was more.³

3. Introduction to the Primary Significance of the Errors on the Statute of Frauds Issue

In one of the most significant instances of disregarding the “scintilla” rule and other aspects of the established summary judgment standard, the majority opinion viewed the facts in the record in the light most favorable to granting, rather than denying, summary judgment on the pivotal statute of frauds issue. The court is supposed to do just the opposite, view all facts in the light most hostile to granting summary judgment. It is a devil’s advocate standard.

The statute of frauds issue was pivotal in that denial of summary judgment on the statute of frauds issue would have prevented summary judgment on all the other issues. This does not mean that if it were correct to grant summary judgment on the statute of frauds issue, it would be

³There was more, including, but not limited to, the 4-24-13 Affidavit of Miguel Coves (R.p. 280) and the 5-20-13 Supplemental Interrogatory Response (R.p. 396.)

correct to grant summary judgment on all the other issues. The rough outline of the majority's progressions of dismissal is as follows. The majority first determined there was no written contract, but found there was definitely evidence of an oral contract. The majority then determined that the statute of frauds rendered the oral contract unenforceable. The majority then equated the unenforceability of the oral contract with nonexistence of an oral contract. In turn, the majority found Ibanez owed no fiduciary duties to his employer, in part because he was "noncontractual." Similarly, the majority ruled that because there could be "no breach of contract," the tortious interference count fell. Finally, the majority ruled that because the tortious interference count fell, the UTPA count fell as well.

4. Variations on the Circuit Court's Digressions from the Summary Judgment Standard

The majority opinion indulged in all inferences from the facts that would favor the party moving for summary judgment, rather than favor the nonmoving party. This was error. The majority opinion did not confine itself to inquiry into whether, on things that made a difference under the law, there were factual issues in the record or competing views or inferences to be drawn from facts in the record. When there are, this finding mandates denial of summary judgment, simpliciter.

The majority did not address at all, the Circuit Court's clearly erroneous extensive reliance on devices denominated as "judicial admissions" and "sham affidavits."

These errors of the Circuit Court were distinctly stated as issues and discussed at length in the Appellant's Brief. These devices were subjects confusing or unclear enough to the Circuit Court to result in an erroneous exclusion of evidence. However, the Circuit Court's insistent use of these devices was not ruled upon by the Court of Appeals for the benefit of possible further review by the Supreme Court or edification of the bench, bar, and citizenry.

Yet, it appears that, to the same erroneous effect, the majority made inconclusive remarks about any opposition materials which were mentioned, and then drifted into weighing the evidence and the inferences preferred by the majority and picking the defendants as the winner by making factual findings. The majority did so despite contrary evidence in the record, and despite other views of the facts. It is respectfully submitted that this oversight was plain error and should be corrected.

This approach was heralded by the majority's partial statement of the summary judgment standard. The majority correctly states and cites portions of the standard, but omits the "scintilla" rule confirmed again in Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). (Cf. Op. at 4.) The full standard is set out in Appellant's Brief at 2-4.

The majority adds to its partial recitation of the summary judgment standard, "[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact which is not genuine." (Op. at 4.)

The majority thereafter never specifically ruled on or identified a single unreasonable inference urged or ungenuine issue of fact proffered.

This principle of disregarding shams still does not permit the Circuit Court or the reviewing court, upon reciting the principle, to proceed to weigh or resolve issues of fact which are for the jury, nor choose between competing inferences from the facts, or otherwise disregard the summary judgment standard and the province of the jury. This is particularly so when the court makes no specific findings at all satisfying the stated elements of the principle.

The majority never makes a single ruling or finding that any inference proffered by Coves Darden is unreasonable or that any issue of fact pointed up by Coves Darden is not genuine. Yet, to the contrary, the ten-page dissent saw reasons for inferences proffered by Coves Darden, and

saw plainly, issues of fact mandating denial of summary judgment. The dissent was at least as reasonable as a reasonable juror. This confirms that granting summary judgment was manifest error.

The majority's decision affirmed the Circuit Court's extraordinary decision determining that there were no facts in the record which could support recovery on any legal theory. This, the majority did, even though Ibanez agreed to an employment arrangement, milked thousands and thousands of dollars from Coves Darden, engaged Coves Darden's trust sufficiently to get Coves Darden to sponsor him and underwrite all of his nonimmigrant visa expenses and international travel, moved onto their farm and took charge of millions of dollars' worth of purebred inventory, worked against Coves Darden's interests while on the payroll, lied to Coves Darden, failed to inform Coves Darden of important matters in his charge in a gross dereliction of duty, gave no notice of his departure, and timed his departure in a manner calculated to cause financial and other damage.

5. The Existence of a Contract

As noted above, the majority's opinion granting summary judgment on all four counts of the complaint hinged almost entirely on a factual "finding"⁴ by the majority that the oral contract between Coves Darden and Ibanez violated the statute of frauds. However, the majority first found that there could be no written contract.

6. The Existence of a Written Contract

The majority determined that there was no written contract because Coves Darden was unable to produce one with Ibanez's signature on it, and offered no testimony that Ibanez had ever definitely placed his signature on the written contract.

⁴ "We find that the oral contract violated the statute of frauds." (Op. at 7.)

However, as recognized by both the majority and the dissent, under South Carolina law, the absence of a party's signature is not determinative of the existence of a written contract between parties. A written contract may still be recognized as the contract between the parties if there is evidence that the nonsigning party accepted and acted upon it. The error of the majority was that the majority found as a fact that Ibanez had not "agreed" to the written contract (Op. at 5) because an affidavit failed to "state" that Ibanez "agreed to or accepted" the terms of the written agreement. Compare the 5-23-13 Supplemental Interrogatory Response: "Upon information and belief, the written document was presented to and acknowledged by Ibanez in or before the time of his visa interview in February of 2012." (R.p. 397.)

The majority's conclusion was legal error because the following matters appear in the record and indicate that Ibanez accepted the contract through his behavior:

1. He was advised by international phone call that there was a written contract in the file he would likely be questioned about at the visa interview at the consular section of the U.S. embassy in Madrid, Spain, where he had to make application for his visa. He would have to be issued the visa before being allowed to come to the U.S. and commence work pursuant to the contract.
2. He had the contract explained and discussed with him by the bilingual Miami immigration lawyer who called him to go over the visa interview process.
3. He received the visa in Madrid, before crossing the Atlantic to begin work, based on the statements in the visa application and the written contract.
4. He moved from Spain.
5. He and his family lived in the house provided for him by Coves Darden.
6. He used the car provided for him by Coves Darden.

7. He actually commenced work.
8. He performed in a competition for Coves Darden.
9. He actually received Coves Darden's money and the benefits of all they did for him and his family.

It was therefore error to affirm summary judgment finding that no written contract existed.⁵

7. The Existence of the Oral Contract and the Nonapplicability of the Statute of Frauds

The majority first does acknowledge that "[t]here is evidence in the record supporting Coves Darden's claim" that "the parties entered into an oral contract." (Op. at 5.)

However, the majority concludes that the contract entered into by the parties was intended by the parties to be impossible to perform within one year and that the statute of frauds therefore rendered the contract unenforceable. This is oversight, and incorrect.

The oral contract defined the length of the employment contract as whatever length visa was granted, even if less than a year. The majority, on the other hand, defined the length of the oral employment contract as unequivocally longer than a year. This simply was not the fact and undermines the majority's entire opinion.

The majority seems to misunderstand the sequence of events including the formation of the contract and the point at which a visa is issued or not. The oral contract, which the majority recognizes was entered into,⁶ was formed before the visa was issued, with an agreed duration

⁵The dissent astutely points out at least the possibility of a statute of frauds issue which would remain, even if the Court recognized that the parties had entered into the written contract despite the absence of a signature by Ibanez.

⁶The statute of frauds does not so much negate the existence of an oral contract that is within the statute, as make the contract, at the option of the person resisting it, unenforceable against the party who has standing to raise the statute and who successfully does so. It is for this

defined by the length of the visa granted. (Supplemental Interrogatory Response, R.p.453.)

It was possible for the visa to be granted for less than a year. The statute of frauds therefore did not apply and it was error to grant summary judgment holding that the statute of frauds applied.

The visa was contemplated to be granted, and was granted, on the front end of Ibanez going to work. It was not granted, as seems to be implied by the majority opinion at 8, subsequently to Ibanez commencing work. It was not granted, as seemingly implied by the majority, as something subsequently terminating or truncating a contracted period of performance. It defined the period of performance. This misapprehension may have played into the majority's error of law and application of law to fact, discussed further hereinbelow.

As discussed in the dissenting opinion, even if the visa had been granted after Ibanez commenced work, this fact would not have changed the status of the contract, under South Carolina law, as one which, when made, was not impossible of performance within one year. Weber v. Perry, 201 S.C. 8, 9, 21 S.E. 2d 193, 194 (1942) (oral contract of employment for fixed period longer than one year, or so long as other condition remains in place, not exceeding the

reason, for example, that a third party, such as one sued for tortious interference with contract, cannot raise the statute of frauds in an attempt to negate the existence of a contract and defeat the claim for tortious interference. Bocook Outdoor Media, Inc. v. Summey Outdoor Advertising, Inc., 294 S.C. 169, 363 S.E.2d 390 (Ct.App. 1987); Hatcher v. Harleysville Mut. Ins. Co., 266 S.C. 548, 225 S.E. 2d 181 (1976). This principle precluded summary judgment on the tortious interference claim against Derr, but was overlooked and not addressed by the majority opinion affirming summary judgment on that count.

This principle is also the reason that the statute of frauds is an affirmative defense, which must be pled by the party resisting the contract and proved by the party resisting the contract. The burden of proof and production is on the party raising the defense. Here, the defendants had not pled the defense at the time of filing either of their two motions for summary judgment. The defense was not a legitimate subject of either motion. As already noted, neither motion contained any grounds, and neither was accompanied by affidavit or deposition. This fact is important when regarding the majority's inconclusive remarks about materials in the record which require denial of summary judgment.

fixed period, is not within the statute). See also McGehee v. South Carolina Power Co., 187 S.C. 79, 196 S.E. 538 (1938) (reviewing employment cases in which contingencies, including death or unsatisfactory performance, remove contracts – even for permanent employment – from the statute of frauds; Center State Farms v. Campbell Soup Company, 58 F.3d 1030 (4th Cir. 1995) (applying S.C. law). And see Roberts v. Gaskins, 327 S.C. 478, 484, 486 S.E. 2d 771, 774 (Ct. App. 1997)(a contract having a contingency which may occur within a year is not within the statute); 37 C.J.S. Frauds, Statute of § 52 (2008)(oral agreement of employment whose terms contain a contingency which may happen within one year and on the happening of which, the employment is to cease, is not within the statute); McKinney v. Nat'l Dairy Council, 491 F. Supp. 1108, 1114 (D. Mass 1980)(express or implied-in-fact contingencies in an oral contract, which contingencies could occur within one year, make the contract one under which the full performance contemplated by the contract could have been rendered within one year of the making of the contract).

The majority overlooks available South Carolina law on this subject of contracts whose duration is can be affected by conditions, events or contingencies.

Instead, the majority bases its analysis, erroneously, on a general and inapt proposition of what “most cases hold,” from a general treatise on contracts, Williston on Contracts (4th ed. 2011). (Op. at 8 (citing Williston §24:9 (“[M]ost cases ...hold a contract to render service for more than a year to be within the intention of the statute [of frauds], notwithstanding one or both of the parties may have the option of ending it by notice in a year.”).)

The existence of South Carolina authority on the point precludes reliance on a secondary source’s characterization of what most cases hold. The duration of the contract is set by the length of the visa, which could be shorter than one year. When the visa expires, by law, the work

must stop, and Ibanez must leave the country. That is the case unless other measures are successfully undertaken. These facts in the record, even if disputed, made it error to affirm the Circuit Court.

The difference in the conclusion reached by the majority and the conclusion reached by the dissent can largely be explained by the fact that the majority made an impermissible factual finding, and then built its analysis on an impermissible set of facts.

In order to reach its conclusion, the majority made an outright finding of fact, that "the parties' agreement as to the term of the contract was that the term would be a minimum of two years." (Op. at 6.) This is contrary to the record, is disputed in the record, and is a finding which violates the summary judgment standard.

It certainly is error under the summary judgment standard, regardless of whether couched as a factual finding or as viewing the motion opposition materials and all other evidence in the light most favorable to Coves Darden.

As the dissent properly acknowledged, viewing the motion opposition material in the light most favorable to Coves Darden, the term of the contract was the duration of the validity of the work visa, which, at the time of entering into the contract, was yet to be issued by USCIS, and could be for more than, or less than, a year. (Supplemental Interrogatory Response, R.p.453.) ("[T]he length of the initial term of the special employment contract was for whatever initial duration the O-1 visa was granted and remained in good standing. This was agreed to be up to three years ... and could also end earlier.")

Other materials in the record also support the agreed duration of employment being co-terminous with the length of validity of the yet-to-be-issued visa, e.g., the visa application itself, discussed by the dissent in the Opinion at 15. However, the above cited Supplemental

Interrogatory Response alone precluded the majority from taking its own view of the facts on summary judgment, and finding an agreed term of employment consonant with a dismissal on the basis of the statute of frauds.

The majority makes no express ruling whatsoever on the sufficiency of the interrogatory response to raise an issue of material fact precluding summary judgment. The majority makes passing remarks, but no rulings, about the interrogatory response, and eventually proceeds simply to find contrary to what the interrogatory response quite plainly says.

The majority merely references the interrogatory response, and describes it as “argument.” It is not mere argument. It is a discovery response on file with the court and not a brief. It is one of the materials specifically mentioned by Rule 56(c), SCRCPP. See Rule 56(c) (specifically referencing “answers to interrogatories” as materials to be considered in determining whether there is absence of genuine dispute as to any material facts). The discovery response was squarely before the Court for consideration. The Circuit Judge ruled on how he would treat it. The majority did not.

As if to lighten the weight of the discovery response, the majority also remarks that the interrogatory response was filed “less than a week before the third summary judgment hearing,” but never states any significance or consequence of this fact. It is not for the Court to weigh the interrogatory response because of its timing. Matters of weight are for the jury, not for the court on summary judgment. The majority also omits from its unexplained aside, and likely overlooked again, the fact that the issue to which the interrogatory response was addressed was not pled in the case at the times both the first and the second summary judgment motions were filed by the defendants, and was not raised in either filed motion, and was not raised in any affidavit filed by the defendants as moving parties. The issue was not mentioned until the second

hearing, and then, only verbally, at the hearing, and not in a brief. So, although the timing of the filing was irrelevant to deciding or discussing summary judgment, the timing of the filing was quite prompt. This is contrary to the perception and implication of the Court.

As if to further diminish the weight of the discovery response, the majority also notes in a footnote, as another observation not followed by any ruling as to significance or consequence, that the interrogatory response is not sworn. (Op. at 7, n.2.) Not only does the majority not state the significance or necessity of this observation to deciding whether the Circuit Court was wrong to have granted summary judgment, but the majority omits from its observation that the moving parties filed no affidavits on any material facts whatsoever, and took no depositions. Not a single interrogatory response in the case was sworn. Including the one on which the Circuit Court relied in granting summary judgment. If the form of the discovery response was regarded by the majority as preventing the response from being a discovery response, or as preventing the response from being a “scintilla” as referred to by Hancock, there should be a ruling on the issue. Any oblique or possible argument in this regard was discussed with citation of authority in Appellant’s Reply Brief at 5-8, especially footnote 8.

It was error to ignore the Supplemental Interrogatory Response in determining the agreed duration of the contract, and was error to grant summary judgment.

The contract was in place before the visa was granted and Coves Darden began spending money on it and began performing their side of it before the visa was granted. However, the part of Ibanez’s performance which consisted of actually reporting to work and performing horse training services did not, and could not, begin until Ibanez was issued a visa. The visa is issued before Ibanez can enter the U.S. for purposes of gainful work. It was issued in Madrid, Spain, before he crossed the Atlantic.

Yet, the majority seems to discuss the issuance of the visa as if it were an event occurring subsequent to Ibanez commencing rendition of services. In doing so, the majority overlooks Weber and other South Carolina law, and instead cites an excerpt from a general treatise. If the majority's intention is to propose a change to South Carolina law, it is respectfully submitted that the opinion affirming summary judgment should at least be published in accordance with Rule 220(a), so that all South Carolinians may be subject to the same law and govern their affairs in light of it.

It was error to conclude there was no oral contract after finding evidence of an oral contract. It was also error to find that the statute of frauds rendered the contract unenforceable when one clear view of the facts presented a contract whose terms were not "impossible of performance" within one year.

8. Fiduciary Duty

On the issue of fiduciary duty, the majority decides, based on the fact that it "can find no South Carolina authority," (Op. at 9.) to adopt a new rule declaring that an employee is not per se an agent of the employee's employer, and that agents are not per se fiduciaries of their principals with respect to matters within the subject matter of the employment. In doing so, the majority overlooks the authorities which were cited in Appellant's Brief at 28 and Reply Brief at 21. The majority does not cite them, or discuss their application to this issue, or reject them. The majority's ruling is error. If the law on this important point is proposed to be changed or distinguished for Coves Darden, it should be changed or distinguished for everyone, and the opinion should be published.

As also noted hereinabove, the majority also agreed with the Circuit Court that fiduciary duties were not owed by "noncontractual" employees, a term not defined by the Court or the law.

Respectfully this ruling was erroneous in at least two respects: (1) As highlighted in Issue on Appeal No. 8 and argued in Appellant's Brief at 26-28, an agreement to employment at will is contractual, and (2) Assuming "noncontractual" refers to the absence of a contract for a specific duration, there was such a contract. For this additional reason, the majority opinion is in error and should be reconsidered.

The majority also characterizes Coves Darden's trust in Ibanez as "unilateral." To the contrary, the Affidavit of Miguel Coves says that Ibanez "invited" the trust. (R.p. 280.)

9. Tortious Interference

The majority reasoned that because Coves Darden could not "demonstrate a breach of contract," the tortious interference claimed failed. (Op. At 10.) Because the majority erred in determining there was no oral contract based on the duration of the visa, the majority erred in this ruling as well.

Additionally, as pointed out in a preceding footnote, the statute of frauds is not available to a defendant in a tortious interference case.

Additionally, Coves Darden argued that even a bare-bones "at will" employment contract was a "contract." The majority erroneously failed to rule on this issue, presumably because the majority overlooked the fact that ending one's employment is not the only way one can breach an employment contract. "Breach" does not mean termination or quitting. "Breach" means break a part of the agreement, express or implied. For example, an employer who does not pay an employee as agreed breaches the employment contract (even an at-will employment contract), notwithstanding the employer does not fire the employee.

For these and the reasons in Coves Darden's appellate briefs, it was error to grant summary judgment on the tortious interference claim.

10. UTPA

As noted, the majority largely based its affirmance of the dismissal of the UTPA claim on the absence of a tortious interference tort, which the majority erroneously based on the absence of a contract. Correcting, among other errors, the majority's error about the existence of a contract, reverses this syllogism, and renders dismissal of the UTPA claim an error as well.

Additionally, the majority does not address in its discussion of the UTPA claim or anywhere in its opinion, the significance of the illegal employment facilitated by Derr as an inducement for Ibanez to work for Half Moon. This facet compounded the public impact and the unfair competition manifest in the actions of Derr and Half Moon. As already briefed, improper means in interfering with a commercial relationship is also a factor in some tortious interference theories.

For these and the reasons in Coves Darden's appellate briefs, it was error to grant summary judgment on the UTPA claim.

10. Form, Publishing and Precedential Effect

This case presents profound and highly relevant issues concerning commercial and employment law in South Carolina, as well as procedural law. The unpublished opinion issued on appeal does not discuss or decide all the issues presented on appeal. The unpublished decision adversarially and impermissibly crafts the account of the facts to conduce to the result which is reached. The unpublished decision does not reveal on the face of the decision, the true or proper context of some of the facts, or the Court's remarks about them, or all the issues which were presented to the Court.

In addition to submitting that the opinion should be reconsidered en banc and that the Circuit Court be reversed, Coves Darden respectfully submits that further shielding such an

opinion from public exposure by designating it unpublished and “without precedential effect” perpetuates the likelihood of similar mistakes, and should not be allowed to lessen the prospects of further judicial review.⁷

Any use of such a procedure would allow the error of appellate opinions to be obscured by lack of detail of what happened in the underlying case and lack of detail of the issues that were actually presented on appeal. Use of such a procedure would also prevent required reliance on these opinions in other cases, and thus avoid further public criticism, analysis and review.

In the instant case, the form of the opinion (skipping issues) and the designation of the opinion as “unpublished” would tend to prevent public criticism, analysis and review of what would be a significant change in established contract law, agency law, and commercial tort law in South Carolina. The procedure dampens the actual development and life of the common law. The practice of not publishing some decisions is for the purpose of not making public, decisions that are already of little or no precedential value because they do not decide any controversial issues. The practice is not for the purpose of keeping controversial decisions from being public in order to deprive them of any precedential value.

The requirements of Rule 220(b), SCACR derive from statutes passed by the South Carolina legislature, and the statutes, in turn, are based on authority in the South Carolina Constitution. See S.C. Const. (1895) Art. V, § 9 (1985 Act No. 9), S.C. Const. Art. V, § 25, S.C. Code Ann. § 14-8-250, and S.C. Code Ann. § 18-9-280.

Under Rule 220, in order for an opinion not to be published it must meet three requirements:

⁷This is reminiscent of the problems with and exceptions to the “mootness” doctrine, in which appellate courts are concerned with matters “capable of repetition, yet evading review.” Southern Pacific Terminal Co. v. ICC, 219 U.S. 498 (1911).

1. That the opinion be an opinion of “the Supreme Court”; and
2. That the opinion meet all requirements for issuance of a memorandum decision, including unanimous decision of “the Supreme Court” (not panel) that publishing the decision would have no precedential value, and that it meets at least one of four specific sets of circumstances; and
3. That the opinion be a memorandum decision.

The decision here should meet all of the above requirements in order to be unpublished, but does not meet any.

Rules 220 (b)(1) and 220 (b)(2) provide exceptions to the requirement that the appellate court address each of the issues presented on appeal. Rule 220 (b)(1) provides one exception, which is for use of the “Supreme Court,” rather than for the intermediate Court of Appeals. Rule 220(b)(1) requires two unanimous determinations by “the Supreme Court” – one, that a published opinion would have no precedential value to the judiciary, the bar, or the rest of the citizenry, and the other, that at least one of four sets of circumstances are present.

While not doing so pursuant to rulemaking authority and procedure, and not doing so as a result of a case or controversy before it, the Supreme Court issued an order in 1993, In re Memorandum Decisions by Court of Appeals, 471 S.E.2d 456 (S.C. 1993). There, the Supreme Court allowed to the Court of Appeals to issue opinions in the form of memorandum opinions. However, it can hardly be presumed that the Supreme Court intended the Court of Appeals to be exempt from the parts of the rule which still pertain to the Supreme Court.

The reference in Rule 220(b)(1) to precedential value, or lack thereof, does not refer to a decision that should not be precedent because bad or unreliable. The term also does not refer to lack of precedential value established by the fiat of declaring the opinion to have no precedential

weight. The term refers to whether the decision, good or bad, makes some ruling affecting, changing, developing, refining, affirming, clarifying or illuminating existing common law and precedent. It is unknown whether the Court of Appeals determined unanimously that the opinion would have no precedential value if published. It is clear that the Supreme Court did not do so.

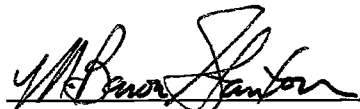
None of the four sets of circumstances of Rule 220(b)(1) are present here. It would not be beyond some to argue that Rule 220(b)(1)(D) applies – “that no error of law appears.” However, the majority did not rule upon some issues presented. Further, the presence of a dissent finding error in both the Circuit Court’s ruling and the majority opinion precludes a unanimous decision that no error of law appears.

Rule 220 (b)(2) provides the one exception available to the Court of Appeals in declining to address issues, but it does not provide any basis for not publishing. The Court need not address for “a point which is manifestly without merit.” Rule 220 (b) (2), SCACR. None of the thirteen distinct points presented are manifestly without merit – they all present instances of clear and pertinent error by the Circuit Court, supported by authority.

11. Conclusion

Accordingly, Coves Darden requests that the appeal be reheard en banc and that the Circuit Court’s order granting the defendants summary judgment be reversed and the matter should be remanded to the Circuit Court. The decision in the case should also be published, whether it be reversal or affirmance.

Respectfully submitted,



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ATTORNEY FOR APPELLANT
COVES DARDEN, LLC

Date:

September 1, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 12-CP-02-01772

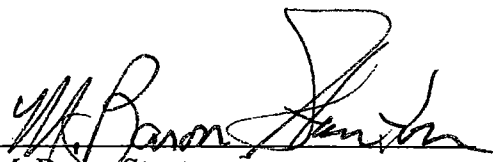
Coves Darden, LLC, ... Appellant,
v.

Francisco Jose Garcia Ibañez, Dori Derr and Half Moon Stables, LLC, ... Respondents.

CERTIFICATE OF SERVICE

I, M. Baron Stanton, do hereby certify that I have, on September 1, 2016, served the foregoing Appellant's Petition for Rehearing upon the Respondents by causing a copy thereof to be mailed with proper postage to the address indicated below:

Thomas R. Young, Jr., Esquire
Law Offices of Tom Young, Jr., PC
P.O. Box 651
Aiken SC 29802


M. Baron Stanton

APPENDIX DIVIDER

H

The South Carolina Court of Appeals

Coves Darden, LLC, Appellant,

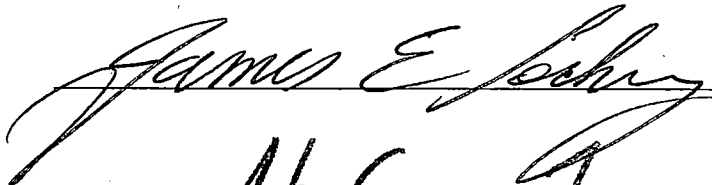
v.

Francisco Jose Garcia Ibañez, Dori Derr, and Half Moon
Stables, LLC, Respondents.

Appellate Case No. 2014-000339

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.

 A.J.

I would grant the petition for rehearing

 J.

Columbia, South Carolina

cc:

M. Baron Stanton, Esquire

Thomas Roy Young, Jr., Esquire

FILED

11-28-16

James M. Derr, Esquire
The Honorable Doyet A. Early, III