

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
John Kennedy,)
)
)
Plaintiff,)
)
vs.)
)
City of Myrtle Beach Police Department,)
and Amy Prock, Angela Kegler, and John)
Pederson (In their Individual Capacities),)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS

C.A. No. 2017-CP-26-05913

**ORDER ON DEFENDANTS'
MOTION TO DISMISS**

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SC Court of Appeals

This is an employment law action alleging breach of contract, breach of contract accompanied by fraud, and civil conspiracy. Plaintiff is a former police officer who was terminated by the City. The defendants filed a motion for judgment on the pleadings. The motion came before the court on April 23, 2019. Defense counsel was present. Additionally, both sides briefed the court on the relevant issues. Having considered the legal arguments of the parties, the court grants the motion and dismisses this action with prejudice.

All three of Plaintiff's claims – breach of contract, breach of contract accompanied by a fraudulent act, and civil conspiracy – turn on the issue of whether he was employed an at-will. Clearly he was. The City operates under a council-manager form of government. *Todd v. Smith*, 305 S.C. 227, 231, 407 S.E.2d 644, 646 (1991) (“the City of Myrtle Beach has elected to adopt the council/manager form of government”). Hiring and firing authority in a council-manager form of government rests in the City Manager under S.C. Code § 5–13–90(1). *Dew v. City of Florence*, 279 S.C. 155, 161, 303 S.E.2d 664, 667 (1983) (citing South Carolina Code § 5–13–90(1) which “allows the City Manager in a council-manager form of government to dismiss any City employee ‘for the good of the municipality’”). “Every court that has considered [§ 5–13–

90(1)] has held that this statutory provision means that employees in municipalities with the council-manager form of government serve at the will and pleasure of the City.” *Lamond v. City of Myrtle Beach*, 1991 WL 433750, at *1 (S.C. Com. Pl. Oct. 25, 1991) (collecting cases and specifically holding that City of Myrtle Beach employees are employed at-will); *Dew v. City of Florence*, 279 S.C. 155, 161-162, 303 S.E.2d 664 (1983); *Bunting v. City of Columbia*, 639 F.2d 1090, 1093-1094 (4th Cir. 1981) (under § 5-13-90(1) “city employees . . . hold their positions at the will and pleasure of the city”); *Mills v. Leath*, 709 F.Supp. 671, 674 (D.S.C. 1981) (“Courts have consistently interpreted [§ 5-13-90(1)] as providing only for at-will employment of municipal employees.”); *Bane v. City of Columbia*, 480 F.Supp. 34, 37-38 (D.S.C. 1979).

The plaintiff in *Lamond* made the same arguments Plaintiff makes here: that he could have a contract based on oral assurances or the City’s policies. *Lamond* rejected those arguments because “[a]ny [oral] assurance . . . was contrary to Section 5-13-90(1)” and held that even if the City’s policies could arguably alter at-will employment, “state statutory law and case law support the conclusion that employees of the city of Myrtle Beach are at-will employees” as a matter of law. *Id.* The City’s Code of Ordinances conform to state law. City of Myrtle Beach Code of Ordinances Section 2-81(b) (“The city has a policy that all employment status is ‘at will’, with the exception of judges under the unified court system.”). Thus, as a matter of law, City employees are employed at-will.

Turning then to Plaintiff’s claims, he clearly cannot assert breach of contract or breach with fraud because at-will employment cannot be the basis for such claims. *Allegro, Inc. v. Scully*, 418 S.C. 24, 35, 791 S.E.2d 140, 146 (2016), *reh’g denied* (Oct. 26, 2016) (where “there is nothing to suggest this was anything other than an at-will relationship,” there is “no contract on which [Plaintiff] can predicate [hi]s claims of breach of contract and breach of contract

accompanied by a fraudulent act.”); *Hudson v. Zenith Engraving Co.*, 273 S.C. 766, 769, 259 S.E.2d 812, 813 (1979) (“The termination of employment at will by either party does not normally give rise to a cause of action for breach of contract.”).

Plaintiff’s conspiracy claim against the City and John Pederson is barred because an at-will employee cannot sue the entity that employed him or the decisionmaker who fired him. *Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 596 S.E.2d 67 (2004) (dismissing former at-will county employee’s civil conspiracy claim brought against county council members in individual capacity who voted to terminate plaintiff’s employment because they cannot be sued for doing what the at-will doctrine gives them the right to do) (“Angus I”) (affirmed in pertinent part by *Angus v. Burroughs & Chapin Co.*, 368 S.C. 167, 628 S.E.2d 261, 262 (2006) (“Angus II”)); accord, *Brailsford v. Wateree Cmty. Action, Inc.*, 135 F. Supp. 3d 433, 450 (D.S.C. 2015) (Angus I stands for the proposition “that an at-will employee cannot sue his employer, or anyone acting within his authority on behalf of his employer, for civil conspiracy arising out of his termination”); see also, S.C. Code § 5-13-90(1) (city manager empowered to terminate employees).

Moreover, as a police officer, Plaintiff was a public official. *State v. Bridgers*, 329 S.C. 11, 16, 495 S.E.2d 196, 198 (1997) (collecting cases and stating that “city police officers are . . . public officials”); *Saxton v. Town of Irmo Police Dep’t*, 2016 WL 1178201, at *3 (D.S.C. Mar. 28, 2016) (“it is clear that the [police officer] Plaintiff is in fact a public official”); *McClain v. Arnold*, 275 S.C. 282, 270 S.E.2d 124 (1980) (holding that a police officer is a public official); *Botchie v. O’Dowd*, 315 S.C. 126, 432 S.E.2d 458 (1993) (holding that a deputy sheriff was a public official); *Gause v. Doe*, 317 S.C. 39, 451 S.E.2d 408 (Ct. App. 1994) (noting that a police officer is a public official). As an at-will public official, Angus II bars his claim against all

defendants. *See, Saxton, supra* (dismissing termination-related conspiracy claim because Angus II held that “a public official cannot bring a civil conspiracy claim against a member of the public arising out of that public official's termination”); *Reed v. Town of Williston*, 2010 WL 1409427, at *10 (D.S.C. Feb. 26, 2010) (citing Angus II and stating that “[u]nder South Carolina law a public official who is employed at-will is prohibited from suing anyone for a civil conspiracy” relating to the termination of their employment), *report and recommendation adopted*, 2010 WL 1409425 (D.S.C. Mar. 31, 2010); *Brown v. City of Columbia*, 2011 WL 3654472, at *1 (D.S.C. June 16, 2011), *report and recommendation adopted*, 2011 WL 3654468 (D.S.C. Aug. 19, 2011) (citing Angus II and holding that “[an at-will] plaintiff who is a public official cannot maintain a civil conspiracy claim against non-employer third parties”). The fact that the remaining defendants are also City employees is irrelevant. They are also “non-employer third parties,” *Brown, supra*, because in their individual capacities they did not employ Plaintiff. The individual defendants here are citizens of Horry County sued in their individual capacities. Such suits are, as a matter of law, suits against members of the public for they seek to impose personal liability against the personal assets of these defendants. Because “a public official who is employed at-will is prohibited from suing anyone for a civil conspiracy” *Reed, supra*, Plaintiff's civil conspiracy claim fails because he was employed as an at-will public official. *See also, Hollis v. Fairfield Cty.*, 2014 WL 5840459, at *1 (S.C. Ct. App. Nov. 12, 2014) (Angus II barred at-will animal control officer's conspiracy claim over his termination because he was a public official).

Based on the foregoing, Defendants' motion is hereby granted and this action is dismissed with prejudice.

BENJAMIN H. CULBERTSON
FIFTEENTH JUDICIAL CIRCUIT

Conway, SC

Date: _____



Horry Common Pleas

Case Caption: John Kennedy VS Police Department Myrtle Beach , defendant, et al

Case Number: 2017CP2605913

Type: Order/Dismissal

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148