

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
  
Dr. Kaoru Pridgen, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Colonial Family Practice, LLC; Varsity )  
Family Care Partners, LLC; Family Care )  
Partners d/b/a Family Care Partners )  
Management, LLC; Dr. Clay Lowder; )  
Thomas W. Watson; and Dr. Gary R. Katz, )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

C.A. Case No.: 2018-CP-40-02545

ORDER

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SC Court of Appeals

Dr. Kaoru Pridgen (“Plaintiff”) filed this lawsuit on May 9, 2019, asserting claims including: (i) sex discrimination in violation of Title VII, (ii) violation of the Equal Pay Act, (iii) breach of contract, (iv) civil conspiracy, (v) negligent misrepresentation, (vi) breach of contract accompanied by a fraudulent act, and (vii) promissory estoppel. *See* Compl. (May 9, 2019); *see also* Am. Compl. (Mar. 14, 2019). Defendants deny these allegations.

This matter is before the Court on a Motion for Partial Summary Judgment filed July 16, 2019, by Colonial Family Practice, LLC (“Colonial”), Family Care Partners Management, LLC (“FCP Management”), Dr. Clay Lowder (“Lowder”), and Thomas Watson (“Watson”) (collectively the “Colonial Defendants”). The Colonial Defendants seek summary judgment as to claims<sup>1</sup> based on contractual and verbal agreements that Plaintiff would obtain an ownership interest in Colonial. Plaintiff filed a memorandum in opposition on December 3, 2019. A hearing was held on December 5, 2019. The Court hereby grants the Colonial Defendants’ Motion.

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<sup>1</sup> Breach of contract (third cause of action), negligent misrepresentation (fifth cause of action), breach of contract accompanied by a fraudulent act (sixth cause of action), and promissory estoppel (seventh cause of action).

### SUMMARY JUDGMENT STANDARD

Summary judgment shall be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that . . . no genuine issue [exists] as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRCP. “[A] court cannot properly deny the motion after only finding that a genuine issue of material fact exists as to one element of the plaintiff’s claim; rather, . . . the court must determine that a genuine issue of material fact exists for each essential element of the plaintiff’s claim.” *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007). When determining whether genuine issues of material fact exist as to all elements of a claim, the court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002). However, “a court cannot ignore facts unfavorable to [the nonmovant], and it must determine whether a verdict for that party would be reasonably possible under the facts.” *Bloom v. Ravoir*, 339 S.C. 417, 529 S.E.2d 710 (2000).

“To survive summary judgment, the evidence presented [by the non-movant] must amount to more than mere speculation and conjecture.” *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 299, 701 S.E.2d 742, 754 (2010) (Hearn, J., concurring in part and dissenting in part) (citing *McKnight v. S.C. Dep’t of Corrs.*, 385 S.C. 380, 390, 684 S.E.2d 566, 571 (Ct. App. 2009)). “[I]dle speculation, which has no basis in the record, is clearly insufficient to overcome” summary judgment. *Richland-Lexington Airport Dist. v. Atlas Properties, Inc.*, 854 F. Supp. 400, 424 (D.S.C. 1994). A party “cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another.” *Id.* (citation omitted).

## UNDISPUTED FACTS

Plaintiff is a family medicine doctor practicing in Columbia, SC. Plaintiff joined Colonial as an employee-physician on or about May 31, 2013, at which time she signed an Employment Agreement (“Agreement”) with Colonial.<sup>2</sup> Paragraph 15 of the Agreement states in full:

At the end of the thirty-six (36<sup>th</sup>) month of employment, both Employer and Employee agree that consideration will be given to permitting Employee to purchase a membership interest in Colonial Family Practice, LLC (“LLC”) at the end of the third (3<sup>rd</sup>) year of employment, or at such other time as agreed to by the parties. If Employee desires to become a member of Employer and the member(s) of Employer agree(s), Employee will then acquire a membership interest and this Agreement will be terminated by consent. The purchase price, percentage amount and remaining terms of such buy-in and the method of payment shall be determined at the time of buy-in.

Agreement at ¶ 15. Plaintiff continues to practice with Colonial to this day.

In December 2015, Colonial was involved in a series of complex transactions after which Colonial’s sole owner was Dr. Lowder (“2015 Transaction”). The 2015 Transaction involved Varsity Family Care Partners, LLC (“Varsity”) contributing capital to the medical practice. Family Care Partners Holdings, LLC (“FCP Holdings”), a nonparty to this action, and Defendant FCP Management were created as a part of the 2015 Transaction. All physician-employees of Colonial, including Plaintiff, remained employed by Colonial after the 2015 Transaction.

Plaintiff was deposed in this case on July 29, 2019. She was asked: “Do you want to be offered partnership currently?” Her response: “No.”<sup>3</sup>

## DISCUSSION

### **I. PLAINTIFF HAS NO CONTRACTUAL ENTITLEMENT TO PARTNERSHIP.**

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<sup>2</sup> It appears Plaintiff and Colonial signed the Agreement on or about June 11, 2013; however, by the Agreement’s own terms, it was effective as of May 31, 2013.

<sup>3</sup> Plaintiff Depo., 303:21-23.

Plaintiff's contract claims<sup>4</sup> are based on her Agreement with Colonial. *See* Am. Compl. ¶¶ 81-86. These claims are asserted against all Defendants; however, because the Agreement is between Plaintiff and Colonial, and there is no evidence of an assignment, these claims are not viable against Varsity, FCP Management, Lowder, Watson or Katz. "Generally, one not in privity of contract with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of contract between the defendant and a third party is not, as such, recoverable by the plaintiff." *Clark v. Bodolosky*, 383 S.C. 418, 429-30, 679 S.E.2d 527, 533 (Ct. App. 2009) (quotation and citation omitted). "An agent . . . is not liable to a third party for breach of a third party contract by his principal." *Holder v. Haskett*, 283 S.C. 247, 251, 321 S.E.2d 192, 194 (Ct. App. 1984) (citing *Skinner v. Ruddock, Inc. v. London Guarantee & Accident Co.*, 239 S.C. 614, 124 S.E.2d 178 (1962)).

Plaintiff asserts all non-Colonial Defendants are in privity with Plaintiff and liable for Colonial's alleged breach of the Agreement based on their alleged fraudulent conduct or intertwined business operations. She relies on *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 817 S.E.2d 273 (2018) and *Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 668 S.E.2d 798 (2008) to support her position. These cases involve amalgamation, also known as the "single enterprise theory" (to hold more than one entity liable) and piercing the corporate veil (to hold shareholders of an entity liable). Although Plaintiff has testified the non-Colonial Defendants made repetitive false promises that she would receive the opportunity to purchase an ownership interest, this evidence is insufficient to meet Plaintiff's high burden of having this Court disregard the corporate form. "It is settled authority that the doctrine of piercing the corporate veil is not to be applied without substantial reflection. *Drury*, 380 S.C. at 101, 668 S.E.2d at 800 (citing *Sturkie v. Sifly*,

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<sup>4</sup> Breach of contract and breach of contract accompanied by a fraudulent act

280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct. App. 1984)). Further, the “single business enterprise theory requires a showing of more than the various entities’ operations are intertwined.” *Pertius*, 423 S.C. at 655, 817 S.E.2d at 281.<sup>5</sup> Plaintiff has failed to meet her burden of proof to hold the non-Colonial Defendants liable for alleged breach of the Agreement under either the single enterprise theory or piercing the corporate veil.

Plaintiff also asserts Varsity and FCP Management are in contractual privity with Plaintiff based on purported assumption language in an Acquisition Agreement from the 2015 Transaction. She points to Section 8.1.4, which provides:

Buyer shall be responsible for the payments and benefits to be provided to Continuing Employees in accordance with Section 8.2, and continuation coverage for Continuing Employees in accordance with Section 8.2, as well as any other potential liability relating to any discontinuation of the employment of any Continuing Employee on or after the closing.

Plaintiff interprets “Continuing Employees” to include her. However, Section 8.1.2 defines “Continuing Employees” as “Non-Practitioner Employees” and Section 8.1 defines “Non-Practitioner Employees” as employees who are not Healthcare Providers. Plaintiff was undisputedly a healthcare provider, which renders this section inapplicable. She concedes she has no evidence that her Agreement was assigned to any third-party.

With respect to Plaintiff’s contract claims against Colonial, Plaintiff’s Agreement does not contain a promise or guarantee that she will become an owner of Colonial, as she asserts. Rather, it provides in plain and unambiguous<sup>6</sup> language that only “consideration will be given” to whether

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<sup>5</sup> “Combining multiple corporate entities into a single business enterprise requires further evidence of bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities’ legal distinctions.” *Id.*

<sup>6</sup> Plaintiff asserts in her memoranda that the language of the Agreement is ambiguous. However, her counsel conceded at the hearing on December 5, 2019, that the Agreement is unambiguous. In any event, contractual ambiguity exists only “when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages, and terminology as generally understood in the trade

she will be allowed to buy an ownership interest. *See* Agreement at ¶ 15. When interpreting a contract, the Court must ascertain and give effect to the intention of the parties. *Chan v. Thompson*, 302 S.C. 285, 289, 395 S.E.2d 731, 734 (Ct. App. 1990). To determine the intention of the parties, the Court “must first look at the language of the contract . . . .” *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm’n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). When the language of a contract is clear and unambiguous, the determination of the parties’ intent is a question of law. *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997). Here, the Court finds the Agreement entitles Plaintiff only to consideration for partnership.

## II. THE ALLEGED VERBAL PROMISES ARE NOT ENFORCEABLE.

In support of Plaintiff’s claims for breach of contract, breach of contract accompanied by a fraudulent act, and promissory estoppel, she alleges Defendants made verbal “promissory representations [that] . . . she would become a partner.” She asserts these verbal promises were made before she signed the written Agreement as well as after its execution.

Alleged verbal promises regarding partnership *before* the Agreement was executed are inadmissible to vary the terms of the Agreement. *See* Agreement at ¶ 22. “A merger clause expresses the intention of the parties to treat the writing as a complete integration of their agreement.” *Wilson v. Landstrom*, 281 S.C. 260, 315 S.E.2d 130 (Ct. App. 1984). “The terms of a completely integrated agreement cannot be varied or contradicted by parol evidence<sup>7</sup> of prior or contemporaneous agreements not included in the writing.” *Id.* at 266, 315 S.E.2d at 314.

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or business.” *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 493 S.E.2d 875 (Ct. App. 1997). The Court finds Paragraph 15 of the Agreement is unambiguous as written.

<sup>7</sup> “The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written agreement when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument.” *Redwend L.P. v. Edwards*, 354 S.C. 459, 471, 581 S.E.2d 496, 503 (Ct. App. 2003) (citing *Estate of Holden v. Holden*, 343 S.C. 267, 539 S.E.2d 703 (2000); *Crafton v. Brown*, 346 S.C. 347, 550 S.E.2d 904 (Ct. App. 2001)).

Plaintiff alleges *after* the Agreement was signed, Colonial (through its CEO, Lissa Lara, and CMO, Dr. Lowder) made verbal modifications to the Agreement such that Plaintiff would be considered for partnership after merely 18 months of employment. Verbal agreements modifying the three-year requirement in Paragraph 15 of Plaintiff's Agreement, are not enforceable for several reasons. First, the Agreement states that any modification of the Agreement must be in writing. Agreement at ¶¶ 22, 23. Although Plaintiff correctly points out "a written contract may be modified by oral agreement even when the contract[] expressly states all changes must be in writing," *King v. PYA/Monarch, Inc.*, 317 S.C. 385, 390, 453 S.E.2d 885, 889 (1995), there is no evidence in the record of any agreement between the parties that Plaintiff would be made a partner after 18 months. Although a discussion may have occurred between Plaintiff and Colonial's CEO about Colonial considering Plaintiff for partner before the end of 36 months, there is no evidence the parties entered into any subsequent agreement (verbally or in writing) following this discussion.<sup>8</sup>

Second, any modification of a written contract must satisfy all fundamental elements of a valid contract, including the requirement of separate and adequate consideration, to be enforceable. *Player v. Chandler*, 299 S.C. 101, 104-05, 382 S.E.2d 891, 893 (1989); *First Union Mortg. Corp. v. Thomas*, 317 S.C. 63, 70, 451 S.E.2d 907, 912 (Ct. App. 1994); *Evatt v. Campbell*, 234 S.C. 1, 106 S.E.2d 447, 449-50 (1959). Here, there is no evidence of a meeting of the minds between the parties with regard to all essential terms of the alleged modification, nor is there any evidence of consideration for the alleged verbal modification.

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<sup>8</sup> Plaintiff Depo., 389:22-390:12; *id.* at 26:21-28:18 ("There was a verbal communication ... that [Lissa Lara] would continue to talk to Dr. Lowder about making [Plaintiff] partner sooner than the 36 months."); *id.* at 17:12-13 ("[Lara] said that she had been talking to Dr. Lowder and that 18 months came up," however, Plaintiff conceded Lara "wasn't in a position to agree to it, I don't think."); *id.* at 17:15-16. Plaintiff never discussed the 18-month period with Dr. Lowder. *Id.* 17:17-18:15; *id.* 26:21-28:18.

Plaintiff asserts the verbal modification was supported by consideration including: Plaintiff's continued employment, and allowing Colonial to continue using her personally-owned medical equipment. Such "consideration" is insufficient as a matter of law, as it resulted in no changed circumstances or positions of either party. *See Poole v. Incentives Unlimited, Inc.*, 345 S.C. 378, 382, 548 S.E.2d 207, 209 (2001) (finding continued employment, where duties, position, and salary left unchanged, insufficient consideration for contract modification). There is no evidence that Plaintiff's duties, position, or salary changed as a result of her continued employment after the alleged verbal modification. There is also no evidence Plaintiff agreed to do anything differently with respect to her medical equipment. Plaintiff testified she continued to own the equipment and it was never sold to Colonial.<sup>9</sup>

Third, assuming a verbal agreement modifying the parties' contract had been reached, such an agreement would be legally unenforceable. "Any contract . . . that is not to be performed within one year must be in writing and signed by the party against whom it is seeking to be enforced." *Player*, 299 S.C. a, 105, 382 S.E.2d at 894 (citing S.C. Code Ann. § 32-3-10(4)). "Failure to put such a contract in writing renders it void." *Id.* (citing S.C. Code Ann. § 27-35-20). "Moreover, a contract required to be in writing by the . . . Statute of Frauds cannot be orally modified." *Id.* (citing *Windham v. Honeycutt*, 279 S.C. 109, 302 S.E. 2d 856 (1983)). The verbal modification Plaintiff alleges is that she would be "consider[ed] [for partner] . . . after 18 months."<sup>10</sup> Such an agreement is not to be performed within one year; instead, it is expected to be performed "after 18 months," and therefore falls within the Statute of Frauds' requirement that such agreement be in writing to be enforceable.

### III. ANY AGREEMENT REGARDING A FUTURE OWNERSHIP INTEREST IN COLONIAL IS TOO INDEFINITE TO BE ENFORCEABLE.

<sup>9</sup> Plaintiff Depo., 43:16-45:10.

<sup>10</sup> *Id.*, 394:9-11.

Neither the terms of Plaintiff's Agreement nor the alleged verbal promises are specific enough to be enforceable as a matter of law. Although the existence of a contract is ordinarily a question of fact for the jury, where the undisputed facts do not establish a contract, the question becomes one of law. *Capital City Garage & Tire Co. v. Elec. Storage Battery Co.*, 113 S.C. 352, 362, 101 S.E. 838, 841 (1920). A valid and enforceable contract requires a meeting of the minds with regard to *all* essential and material terms of the agreement. *Patricia Grand Hotel, LLC v. MacGuire Enters*, 372 S.C. 634, 638, 643 S.E.2d 692, 694 (Ct. App. 2007). "[T]he terms and conditions must be stated with reasonable certainty." *Walker v. Preacher*, 188 S.C. 431, 435, 199 S.E. 675, 677 (1938); *Smith v. McClam*, 289 S.C. 452, 457, 346 S.E.2d 720, 723 (1986) (same) (citing Rest. 2d *Contracts* § 131). "Otherwise there is no complete agreement." *Id.*

For a contract to be binding, material terms cannot be left for future agreement. *Aperm of S.C. v. Roof*, 290 S.C. 442, 447, 351 S.E.2d 171, 173 (Ct. App. 1986). A binding and enforceable contract is not formed if the parties contemplate that something remains to be done to establish arrangements or if elements are left for future arrangement. *See Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 762 S.E.2d 696 (2014). An agreement to agree in the future is not enforceable. *Id.* at 579, 762 S.E.2d at 701. "[R]egardless of intent, an agreement which leaves open material terms is unenforceable." *Id.* at 579, 762 S.E.2d at 701. Here, the parties failed to agree as to (i) when the interest would be conveyed, (ii) how the company was to be structured, (iii) what percentage of ownership Plaintiff would receive, (iv) the structure of transaction, (v) price, and other essential and material provisions remained to be determined by the parties. Thus, there is no reasonably definite agreement for the Court to enforce.

#### **IV. PLAINTIFF'S NEGLIGENT MISREPRESENTATION CLAIM IS NOT VIABLE.**

Plaintiff alleges Defendants made fraudulent and negligent misrepresentations regarding her future ownership interest in Colonial. Am. Compl. at ¶¶ 92-102. These alleged statements are not enforceable, as they do not constitute a false representation of material fact, which is an essential requirement for a claim for fraud or negligent misrepresentation. *Winburn v. Ins. Co. of North Am.*, 287 S.C. 435, 439-440, 339 S.E.2d 142, 145 (Ct. App. 1985) (requiring a “false representation” of “fact as distinguished from the mere expression of opinion” or “intention”). “As a general rule, fraud cannot be predicated on a statement that constitutes an expression of an intention.” *Id.* at 440, 339 S.E.2d at 145 (citations omitted).

Alleged misrepresentations based on unfulfilled promises or statements pertaining to future events do not give rise to liability. *Fields v. Melrose Limited P'ship*, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993) (holding statement about future sales price and improvements in development project represented intentions at time and were not false when made); *Winburn, supra* (statement by insurance adjustor that he would “make sure” marine mechanic repaired boat was mere broken promise, no more actionable in negligence than in fraud); *Sauner v. Pub. Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003) (statements as to future events or unfulfilled promises are not actionable); *Turner v. Milliman*, 381 S.C. 101, 671 S.E.2d 636 (Ct. App. 2009) (since mere unfulfilled promises or statements as to future events are not actionable and because no evidence was presented to show statements were made only to induce plaintiffs into procuring insurance policy, trial judge properly granted summary judgment).

### CONCLUSIONS

The Colonial Defendants’ Motion for Partial Summary Judgment is hereby **GRANTED** as follows:

1. As to Plaintiff's claims for breach of contract (third cause of action) and breach of contract accompanied by a fraudulent act (sixth cause of action):

a. Summary judgment is granted to FCP Management, Varsity, Lowder, Watson, and Katz, as these defendants are not parties to the Agreement.

b. Summary judgment is granted as to Colonial because (i) Plaintiff has no contractual entitlement to an ownership interest in Colonial based on the plain and unambiguous language in Paragraph 15 of Plaintiff's Agreement; (ii) there were no enforceable verbal modifications of the Agreement; and (iii) the alleged promise that Plaintiff would become an owner of Colonial is too indefinite to be enforced.

2. Summary Judgment is granted to Defendants as to Plaintiff's claim for negligent misrepresentation (fifth cause of action) because the underlying representation that Plaintiff would be made an owner of Colonial in the future is merely an unfulfilled promise or statement of future event, which is not enforceable as a matter of law.

3. Summary Judgment is granted as to Plaintiff's claim for promissory estoppel (seventh cause of action) because there were no enforceable verbal agreements or promises that Plaintiff would be made an owner of Colonial.

Plaintiff's claims for gender discrimination in violation of Title VII (first cause of action) against Colonial, FCP Management; violation of the Equal Pay Act (second cause of action) against Colonial, FCP Management; and civil conspiracy (fourth cause of action) against Lowder and Watson, are not addressed by the Colonial Defendants' Motion for Partial Summary Judgment and are therefore not affected by this Order. The Motion by Defendant Varsity Family Care Partners, LLC for Summary Judgment is addressed in a separate Order.

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Clifton Newman  
Presiding Judge

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\_\_\_\_\_, South Carolina.



Richland Common Pleas

**Case Caption:** Kaoru Pridgen vs Colonial Family Practice Llc , defendant, et al  
**Case Number:** 2018CP4002545  
**Type:** Order/Summary Judgment

So Ordered

s/ Clifton B. Newman, 2127