

ELECTRONICALLY FILED - 2020 Mar 27 10:39 AM - ORANGEBURG - COMMON PLEAS - CASE#2015CP3800553

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
South Carolina State University,)
)
Plaintiff,)
)
vs.)
)
Denise Simmons,)
)
Defendant.)
)

IN THE COURT OF COMMON PLEAS

C.A. No. 2015-CP-38-553

RECEIVED
Apr 27 2020
SC Court of Appeals

ORDER

THIS MATTER IS BEFORE THE COURT on the August 10, 2017 motion of Defendant, Denise Simmons, for a new trial, or in the alternative, new trial nisi remittitur, under Rule 59, SCRCP, claiming the jury returned a verdict for damages that are grossly in excess of that which the evidence supported after a two-day trial on July 31, 2017, and August 1, 2017, in Orangeburg County Circuit Court. Plaintiff South Carolina State University (“SCSU”) submitted a memorandum on November 20, 2017, in opposition to Defendant’s motion for a new trial. Defendant Simmons submitted a memorandum of law supporting her motion on November 29, 2017. The Court has reviewed the submissions of both parties and the trial transcript. I find that the jury’s verdict in favor of SCSU in the amount of \$414,260.00 is well supported by the evidence admitted at trial and not a product of undue passion or speculation.

A. Standard of Review

The decision to grant or deny a motion for a new trial rests within the discretion of the trial judge, as the trial judge is in a unique position “...to hear the evidence firsthand, evaluate the credibility of the witnesses, and assess the impact of the wrongful conduct on the Plaintiff in terms of damages.” *Burke v. AnMed Health*, 710 S.E.2d 84, 88-89 (S.C. App. 2011). With respect to the specific issues of damages awarded by a jury the Court must do the following:

The Court must respect the verdict of the jury in fact as well as in pretense or theory and must not interfere or substitute its own

judgment for that of the jurors. One is entitled to the constitutional privilege of the fair judgment of the jury rather than that of the Court and this Court will not interfere with the verdict of a jury simply because it is greater than its own estimate.

Perry v. Green, 437 S.E.2d 150, 153 (S.C. App. 1993) (quoting *Brabham v. Southern Asphalt Haulers, Inc.*, 76 S.E.2d 301, 306 (S.C. 1953). An award of special damages for breach of contract only must rest on evidence from which a reasonably accurate conclusion regarding the amount of loss can be logically and rationally drawn. *The Drews Company, Inc. v. Ledwith-Wolfe Associates, Inc.*, 371 S.E.2d 532, 536 (S.C. 1988).

B. Ample Evidence Supports the Jury's Verdict

Both documentary evidence and testimony established that under SCSU's contract with Defendant, SCSU paid to Defendant or on her behalf the amount of \$312,457.00. The contract further expressly provided that, in the event of Defendant's breach of the contract by not remaining in SCSU's employ, the entire amount paid to her or on her behalf would be repaid by Defendant to SCSU. The evidence presented to the jury supports the jury's verdict in an amount of \$312,457.00, as direct damages determined by the express terms of the contract.

Further, under contract law principles, allowable damages also include all amounts necessary "to place the nonbreaching party in the position he would have enjoyed if the contract had been performed." *South Carolina Federal Savings Bank v. Thornton-Crosby Development Company, Inc.*, 399 S.E.2d 8, 12 (S.C. App. 1990). The fact that Defendant's continued employment upon completion of her Ph.D. degree was within the contemplation of both SCSU and the Defendant is clearly established, again, by the express language of the parties' agreement:

FACULTY DEVELOPMENT PROJECT/PLAN

Major goals or objectives:

My entire objective for pursuing the PhD degree has always been to bring my experience back to South Carolina State University (SCSU) with the goal of exposing SCSU students to my areas of specialty, authoring scholarly works on sustainable

development and engineering education, recruiting students to attend the University and enhancing the academic research capabilities of the University.

Likewise, that Defendant's continued employment at SCSU was part of SCSU's "benefit of the bargain," the denial of which would as a natural consequence cause SCSU to suffer a loss, is manifest in the contract. Defendant's own correspondence in connection with the parties' agreement states, "I will stipulate to as many years of employment as you deem appropriate in exchange for your support of this proposal and my degree completion at Clemson University."

Although there is no exact methodology for placing a dollar value on SCSU's loss in connection with Defendant's refusing to remain in SCSU's employ, the additional verdict amount of \$101,803.00 ($\$414,260 - \$312,457 = \$101,803$), as may have been determined by the jury, is reasonable and logical in light of the evidence, and not speculative. Indeed, the testimony indicated (and Defendant even argued to the jury) that it took SCSU two years to find and employ a Ph.D.-degreed replacement for the position abandoned by Defendant at SCSU. Additionally, the value of Defendant's services as a college professor with a Ph.D. is reasonably established by the annual base salaries offered to her by SCSU (\$55,719/year) and Virginia Tech (\$82,500/year). Accordingly, a jury determination of the loss to SCSU in the range of \$55,719.00 at the low-end (for a one year loss of service at the lower salary amount) to \$165,000.00 at the high-end (for two years loss of service at the higher salary amount), would be reasonable, logical, and wholly based on the evidence. *See, e.g., Perry v. Green*, 437 S.E.2d at 153. The jury verdict amount possibly attributable as special damages of \$101,803.00 fails almost exactly within the middle of this range, reflects the jury's logical and dispassionate evaluation of the evidence and valuation of SCSU's loss as a natural consequence of Defendant's abandonment of her position in breach of her contractual obligation to SCSU.

SCSU's claim of breach of contract accompanied by a fraudulent act, a tort claim for which the jury may have properly awarded actual damages consistent with the principles of tort

law, was also submitted to the jury. In tort, actual or compensatory damages may be awarded by the jury. Actual damages include compensation for all injuries which are naturally the proximate result of the Defendant's wrongful conduct. The measure of actual damages is the amount needed to compensate SCSU for the losses proximately caused by Defendant's wrong so that SCSU will be in the same position it would have been if there had been no wrongful injury. *Austin v. Specialty Transportation Services, Inc.*, 594 S.E.2d 867, 874 (S.C. App. 2004).

The fundamental question before the Court with regard to actual damages is whether "there is any evidence to support the damages award..." *Id.* I find there is ample evidence to support the jury's award of \$414,260.00 as actual damages. SCSU invested at least \$312,457.00 in Defendant's education with the express expectation of, and in exchange for, Defendant agreeing to continue to work for SCSU and bring her expertise to SCSU and its students, faculty, and programs. Defendant abruptly and on the eve of a new school year wrongfully abandoned her commitment to SCSU, thereby proximately causing loss and injury to SCSU. A jury verdict of \$414,260.00, as actual damages suffered by SCSU, is reasonable and supported by evidence presented at trial.

I. CONCLUSION

For the foregoing reasons, the jury's verdict is properly supported by the evidence, under either contract law or tort law. Defendant's motion for a new trial is denied, and the jury's verdict in this case is affirmed. Judgment in the amount of \$414,260.00, is hereby entered in favor of SCSU against Defendant Simmons.

IT IS SO ORDERED.

Edgar W. Dickson
Judge, First Judicial Circuit

_____, 2020

Orangeburg, SC



Orangeburg Common Pleas

Case Caption: South Carolina State University VS Denise Simmons
Case Number: 2015CP3800553
Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2020-03-27 10:34:03 page 5 of 5

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John M. Reagle

From: efiledonotreply@sccourts.org
Sent: Friday, March 27, 2020 10:40 AM
To: John M. Reagle
Cc: Michele P. Christensen
Subject: Courtesy NEF RE: 2015CP3800553

Follow Up Flag: Follow up
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NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2015CP3800553

Official File Stamp: 03-27-2020 10:39:35 AM
Court: CIRCUIT COURT
Common Pleas
Orangeburg
Case Caption: South Carolina State University VS Denise Simmons
Document(s) Submitted: Order/Other Order/Other
Filed by or on behalf of: Edgar Dickson

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

- Dwayne Traynor Mazyck for South Carolina State University
- John Charles Ormond, Jr. for Denise Simmons
- John Marshall Reagle for South Carolina State University
- Kimberly Kelley Blackburn for South Carolina State University

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

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April 25, 2020

**RECEIVED**

Clerk, Court of Appeals  
1220 Senate Street  
Columbia SC 29201-3769

**Apr 27 2020**

Via FAX (803-734-1839)

**SC Court of Appeals**

Subj: Notice of Appeal of Circuit Court order in South Carolina State University v Simmons  
(2015-CP-38-553, Orangeburg Ct.)

Dear Sir or Madam,

On April 23, 2020 I filed a Notice of Appeal for Appellant Denise Simmons. Attached to this letter is the final order from the Honorable Judge Edgar W. Dickson in Court of Common Pleas. I believe this order was inadvertently left off my facsimile transmission.

Sincerely,

Martin S. High, Esq.  
For the firm

Enclosures: 1. C.A. No. 2015-CP-38-553 - ORDER

# FAX COVER SHEET

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TO

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COMPANY

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FAX NUMBER 18037341839

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FROM Martin S. High

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DATE 2020-04-25 15:00:36 GMT

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RE Notice of Appeal of Circuit Court order in South Carolina  
State University v Simmons (2015-CP-38-553, Orangeburg Ct.) - Final Order

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**Apr 27 2020**

**SC Court of Appeals**