THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Case No. 2018-CP-40-02545
Appellate Case No. 2020-000067

Dr. Kaoru Pridgen.....Appellant

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.....Respondents.

APPELLANT'S FINAL REPLY TO BRIEF OF RESPONDENTS COLONIAL FAMILY PRACTICE, LLC, FAMILY CARE PARTNERS D/B/A FAMILY CARE PARTNERS MANAGEMENT, LLC, DR. CLAY LOWDER, AND THOMAS W. WATSON, AND BRIEF OF RESPONDENT DR. GARY R. KATZ

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Sources

ARGUMENTS

1. Dr. Pridgen is entitled to partnership and is wronged by not being made a partner.

Throughout her employment[1] with Respondents, Dr. Pridgen was reassured by Respondents, in contract, in writing, in person, and in negotiations, that she would be made a partner of the medical practice. (R. p. 1892, line 21-p. 1893, line 4); (R. p. 3108); (R. p. 1066, line 12-p. 1070, line 22; p. 1080, lines 7-14, p. 1088, lines 3-8; p. 1089, lines 18-21; p. 1090, lines 1-7; p. 1092, lines 9-39; p. 1096, lines 18-24; p. 1112, line 11-p. 1113, line 25; p. 1134, lines 3-6; p. 1226, lines 2-21; p. 1448, line 12-p. 1450, line 8; p. 3103; Watson Recording). But for Respondents agreement to, and promises of, a partnership, Dr. Pridgen would have never left her flourishing solo practice for employment with Respondents. (R. p. 3108; pp. 2552-2567; p. 1068, lines 3-6; p. 1080, lines 7-14; p. 1088, lines 3-8; p. 1089, lines 18-21, p. 1090, lines 1-7; p. 9-39; p. 1096, lines 18-24; p. 1133, lines 3-6). Yet, despite their repeated promises, Respondents have each conspired to block and deny Dr. Pridgen from ever realizing the partnership status she is owed.

Dr. Pridgen had a fully functioning, highly successful practice of medicine for several years before entering into an employment agreement with Respondents. (R. p. 1097, line 16-p. 1198, line 15). Dr. Soto, Dr. Lowder, and Lissa Lara each coveted Dr. Pridgen's skill and experience, and actively recruited her to join their practice at Colonial in 2012. (R. p. 1892, line 21-p. 1893, line 4), (R. p. 1066, line 12-p. 1070, line 22). After a year of negotiations, Dr. Pridgen agreed to merge her medical practice with Colonial, bringing with her full staff, a large patient base, and approximately twenty-five thousand dollars of medical equipment. (R. p. 1098, lines 9-21; p. 1136, lines 3-6). The lynchpin of these negotiations, the single item which caused Dr. Pridgen to take

[1] Colonial Family Practice made the decision to exercise its right pursuant to Paragraph 13(c) of the Employment Agreement to waive the remainder of the 90-day notice of termination period and end Dr. Pridgen's employment immediately on May 1, 2020.

the leap of faith and relinquish her already successful business, was the guarantee that no later than three years into her employment, Dr. Pridgen would be made a partner in the medical practice. (R. p. 3108); (R. p. 1068, lines 3-6; p. 1080, lines 7-14; p. 1088, lines 3-8; p. 1089, lines 18-21; p. 1090, lines 1-7 ["Clay offered me partnership as an enticement for me to bring my practice."]; p. 1092, lines 9-39; p. 1096, lines 18-24; p. 1133, lines 3-6). Dr. Lowder and Lissa Lara additionally promised that Dr. Pridgen would be able to buy into ownership no later than eighteen months of employment. (R. p. 1448, line 12-p. 1450, line 8).

Dr. Pridgen and Colonial memorialized their agreement, that Dr. Pridgen would be made partner no later than three years into her employment with Colonial, by adding the following term into her employment contract:

> 15. Membership Interest Purchase. , At the end of the thrity-six (36th) 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 (3rd) year of employment, or at other such 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 the remaining terms of such buy-in and the method of payment shall be determined at the time of buy-in.

(R. pp. 2552-2567).

In January of 2016, Dr. Pridgen became aware of Varsity's purchase a controlling interest in Colonial Family Practice, at which time the Family Care Partners entity was created. (R. p. 1112, line 11-p. 1113, line 25; p. 3103). Dr. Pridgen was once again explicitly promised that this transaction would not in any way affect her ability to become partner. Dr. Lowder, the person most 'in the know' and in control during a significant time period as managing partner and Chief Medical Officer at times, told Dr. Pridgen, "You're still up for partnership if you want it. Nothing

is going to change." (R. p. 1112, line 11-p. 1113, line 25; p. 3103). Dr. Lowder told Dr. Pridgen she would be given her partnership offer in September of 2016 at a scheduled partnership meeting. (R. p. 1112, line 11-p. 1113, line 25); p. 3103).

In July 2016, Dr. Pridgen met with Tom Watson, then CEO of Family Care Partners. This conversation was recorded. In this conversation, the following transpires:

- Dr. Pridgen confirms that Dr. Lowder stated "we are going to offer you partnership."
- Watson says, "You'll probably be in under the deck before this happens"
- Watson says, "Have you thought about how much you want to invest?"
- Watson says, "Varsity won't exit until they've got somewhere between 3 to 5 times return on money. **So that's roughly what you can expect.**"
- Dr. Pridgen states, "I don't want to wait until next year to buy in." Watson immediately responds "Yeah, **so we're making an exception for you and another doc.**"
- Dr. Pridgen asks, "How much can I invest?" Watson immediately responds "$10,000 to $100,000. In nine months, you can invest again another $100,000."

(Watson Recording).

September, October, November, and December of 2016 came and passed, and yet despite the repeated promises of Dr. Lowder and Watson, Dr. Pridgen was not offered partnership. In early 2017, Dr. Katz became the Chief Medical Officer, and once again promised Dr. Pridgen that she would soon be given her now overdue opportunity to purchase a partnership interest. (R. p. 1226, lines 2-21). Once again, Dr. Katz's assurance that Dr. Pridgen's contract would be fulfilled, and that the promises to her be kept, turned out to be false.

Throughout this entire process, Respondents have attempted to shift blame and make excuses for their non-performance by citing to alleged standards for partnership that Dr. Pridgen failed to meet. (R. pp. 3722-3799). When Dr. Pridgen was brought into the medical practice on the promise of partnership, no such standards were ever given. (R. pp. 2552-2567). Throughout

Dr. Pridgen's entire time as a doctor in Respondents' medical practice, no standards for partnership have ever been made official or provided in writing. (See Depositions produced herewith, i.e. R. p. 1554, line 20 -p. 1555, line 4). These alleged standards, which have shifted over time to suit Respondents' needs, serve only to cover up the wrong that Respondents' have committed upon Dr. Pridgen. Dr. Pridgen was promised partnership from these Respondents, she bargained for partnership, she contracted for partnership, and she relied on the repeated assurances that she would be made partner when making her career-altering decision to bring her solo practice to Colonial. (R. p. 1892, line 21-p. 1893, line 4; p. 3108; p. 1066, line 12-p. 1070, line 22; p. 1080, lines 7-14; p. 1088, lines 3-8; p. 1089, lines 18-21, p. 1090, lines 1-7; p. 1092, lines 9-39; p. 1096, lines 18-24; p. 1112, line 11 - p. 1113, line 25; p. 1133, lines 3-6; p. 1164, line 19 - p. 1172, line 2; p. 1226, lines 2-21, p. 1448, line 12-p. 1450, line 8 ; p. 3103 ; Watson Recording). Dr. Pridgen's career will be forever damaged as a result of the Respondents' failure to uphold their end of the deal with Dr. Pridgen.[2] (R. p. 1164, line 19-p. 1172, line 2); (R. p. 1846, lines 16-18). Any result in this case that does not end in holding these Respondents' responsible for their willful failure to make good on their word will be in direct opposition to basic and fundamental principles of justice.

2. <u>Dr. Pridgen's contract is unambiguous, and at worst ambiguous, thus summary judgment was inappropriate.</u>

Dr. Pridgen's position has always been, and still is, that the terms of her contract unambiguously entitle her to partnership. (Appellant's Brief, p. 17). However, it is clearly

[2] Every male physician partner remains a partner to date, excluding Dr. Katz who served as the CMO for less than a year and he did not treat patients as a practicing physician with the practice. None of the ten male physician partners have left the profitable practice that has, over years, made them millions of dollars in personal income. Though these investment entity tools have created an image of financial loss to the practice, the fact remains that if Dr. Pridgen was a partner she would have made significantly more in income and she incurred significant losses because of the Respondents' actions. (See R. pp. 3104-3107).

established law that Dr. Pridgen may argue alternative legal theories. *Skydive Myrtle Beach, Inc. v. Horry Cty.,* 426 S.C. 175, 187, 826 S.E.2d 585, 591 (2019); *Patterson v. Witter*, 425 S.C. 213, 226, 821 S.E.2d 677, 684 (2018). Therefore, assuming *arguendo*, that the Court does not find Dr. Pridgen's contract to unambiguously entitle her to partnership, the plain language of the contract could only be read as ambiguous.

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). Interpretation of a contract is governed by the objective manifestation of the parties' assent at the time the contract was made, rather than the subjective, after-the-fact meaning one party assigns to it. *N. Am. Rescue Prod., Inc. v. Richardson*, 411 S.C. 37, 378, 769 S.E.2d 237, 240 (2015). The question of whether a contract is ambiguous is a question of law. *Id.* A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear. *Id.* Once the court decides that the language is ambiguous, evidence may be admitted to show the intent of the parties. *Laser Supply Serv., Inc., v. Orchard Park Assoc.,* 383 S.C. 326, 334, 676 S.E.2d. 139, 144 (Ct. App. 2009). The determination of the parties' intent is then a question of fact. *Id.*

Such issues of fact preclude summary judgment. *Wallace v. Day*, 390 S.C. 69, 74, 700 S.E.2d 446, 449 (Ct. App. 2010). "Summary judgment is improper when there is an issue as to the construction of a written contract and the contract is ambiguous because the intent of the parties cannot be gathered from the four corners of the instrument." *Id.* (quoting *Pee Dee Stores, Inc. v. Doyle,* 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009). "The court is without authority to

consider parties' secret intentions, and therefore words cannot be read into a contract to impart an intent unexpressed when the contract was executed." *Id.* "Construction of an ambiguous contract is a question of fact to be decided by the trier of fact." *Id.* (citing *Soil Remediation Co. v. Nu–Way Envtl., Inc.,* 325 S.C. 231, 234, 482 S.E.2d 554, 555 (1997)).

Respondents' argument that Dr. Pridgen's contract is unambiguous in not providing a guarantee of partnership hinges on how the Court interprets the word "consideration." Respondents' cite to a *portion* of the Merriam-Webster Dictionary definition of consideration. (Colonial Brief, p. 5-6 "'consideration' … 'continuous and careful thought' … 'a matter weighed or taken into account when formulating an opinion or plan' … 'a taking into account.'"). Respondents' failed to inform the Court that Merriam-Webster, in the same definition, also specifies that consideration can be defined as "recompense," "payment," and "the inducement to a contract or other legal transaction." Merriam-Webster Dictionary Online, http://merriam-websiter.com/dictionary/consideration (last visited June 22, 2020). This common usage of "consideration" is supported by other reputable sources. See Dictionary.com, http://dictionary.com/browse/consideration (last visited June 24, 2020) ("a recompense or payment, as for work done; compensation"); see also Oxford Learners Dictionaries, http://oxfordlearnersdictionaries.com/us/definition/english/consideration (last visited June 24, 2020) ("a reward or payment for a service"). Using these definitions of consideration, Dr. Pridgen's position on the interpretation of her contract makes perfect sense; she was owed the opportunity to purchase partnership in the medical practice as a recompense or payment for bringing her own profitable solo medical practice to Colonial and providing her employment to Respondents.

Dr. Pridgen's contract contains no specific definition for "consideration" and how it is to be construed within the four corners of the contract. Dr. Pridgen was not the author of the contract, so any ambiguity should be interpreted against the author. See *De Vore v. Piedmont Ins. Co.,* 144 S.C. 417, 142 S.E. 593, 598 (1928). The rule of construction calls for any ambiguity in Dr. Pridgen's contract to be construed against Respondents. (Id.).

"It is a well-settled principle of contract interpretation that absent a contractual definition to the contrary, contract language is given its ordinary and plain meaning." *Bardsley v. Gov't. Emp. Ins. Co.,* 405, S.C. 68, 76, 747 S.E.2d 436, 440 (2013) (citing *Dean v. Am. Fire & Cas. Co.,* 249 S.C. 39, 41, 152 S.E.2d 247, 248 (1967)). A contract is ambiguous when the terms are reasonably susceptible of more than one interpretation, when its meaning is unclear, when it is capable of being understood in more than one sense, when it is obscure in meaning, or when it has a double meaning. See *S.C. Dept. of Natural Res. v. Town of McClellanville,* 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001); *Ellie, Inc., v. Miccichi,* 358 S.C. 78, 94, 594 S.E.2d 485, 494 (Ct. App. 2004); *Bruce v. Blalock,* 241 S.C. 155, 160, 127 S.E.2d 349, 441 (1962). Given that there are clearly multiple ordinary and plain meanings of "consideration," which, when used in context of this agreement, give rise to more than one interpretation of the contract, the contract should be construed as ambiguous. When the terms of a contract are ambiguous, the question of the parties' intent must be submitted to the jury. See *S. Glass & Plastics Co., Inc. v. Kemper,* 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012); *Thalia S. ex rel. Gromacki v. Progressive Select Ins. Co.,*401 S.C. 395, 400-401, 736 S.E.2d 863, 865 (Ct. App. 2012); *HK New Plan Exch. Prop. Owner I, LLC v. Coker,* 375 S.C. 18, 23, 649 S.E.2d 181, 184 (2007). Because the multiple definitions of "consideration" render this contract ambiguous, at worst, the resolution of ambiguity was not appropriate for summary judgment and should be put to a jury.

3. Under any scenario, Respondents' verbal promises of partnership create an enforceable agreement.

When expanding beyond the four corners of the contract, there is no ambiguity as to the intent of the parties in this case. Respondents have represented to Dr. Pridgen time and time again that it was their intent to make Dr. Pridgen a partner in the medical practice. (R. p. 1892, line 21-p. 1893, line 4); p. 3108); p. 1066, line 12-p. 1070, line 22; p. 1080, lines 7-14; p. 1088, lines 3-8; p. 1089, lines 18-21; p. 1090, lines 1-7; p. 1092, lines 9-39; p. 1096, lines 18-24; p. 1112, line 11-p. 1113, line 25; p. 1133, lines 3-6; p. 1226, lines 2-21; p. 1448, line 12-p. 1450, line 8; p. 3103; Watson Recording). Accordingly, Respondents' verbal promises also make them liable for their intentional failure to make Dr. Pridgen partner.

3.1. Respondent's verbal promises modify Dr. Pridgen's contract.

Assuming *arguendo* that Dr. Pridgen's contract does not unambiguously entitle her to partnership and the contract is otherwise not ambiguous, Dr. Lowder, Dr. Katz, and Watson orally modified Dr. Pridgen's contract by repeatedly entering into verbal agreements that Dr. Pridgen would be made partner. (R. p. 1112, line 11-p. 1113, line 25 (..."You're still up for partnership if you want it. Nothing is going to change."...); p. 1226, lines 2-21; p. 3103; Watson Recording) (Dr. Pridgen: "I don't want to wait until next year to buy in." Watson: "Yeah, so we're making an exception for you and another doc."). While Dr. Pridgen's contract states that any modifications should be made in writing, the law of this state is abundantly clear that even when a contract expressly forbids verbal modifications, verbal modifications are still valid and binding. *King v. PYA/Monarch, Inc.,* 317 S.C. 385, 390, 453 S.E.2d 885, 889 (1995).

Furthermore, the statute of frauds does not apply to these verbal modifications. The statute of frauds is designed to protect against fraud and may not be set up as a protection or support of fraud. *Gardner v. Nash,* 225 S.C. 303, 310, 82, S.E.2d 123, 127 (1954). To bring a contract within

the statute of frauds, as not to be performed within year, there must generally be negation of right to perform it within year. *McGehee v. S.C. Power Co.,* 187 S.C. 79, 196 S.E. 538, 539 (1938). If there is a possibility of performance within a year, the agreement is not within the statute of frauds. *Joseph v. Sears Roebuck & Co.,* 224 S.C. 105, 111, 77 S.E.2d 583, 586 (1953). Even if performance within a year is highly improbable, or not expected by the parties, it does not bring a contract within the scope of the statute of frauds. *Id.*

Watson's verbal modification guaranteeing partnership did promise performance within one year. (Watson Recording). Watson made the promise on July 22, 2016 and promised performance at the latest by July 1, 2020. (Watson Recording). It is abundantly clear that Dr. Pridgen is entitled to a partnership opportunity *no later than* after thirty-six[3] months of employment with the medical practice. (See Appellant's Initial Brief Pg. 27-28) ("at no point in the process of modifying the contract did Dr. Pridgen ever negate her original, contractual right to potentially receive partnership interest at any moment, but at least by the 36th month of her employment."). Dr. Pridgen's written contract expressly makes clear that Dr. Pridgen may be made partner at any time, including within one year. (R. pp. 2552-2567) ("or at other such time as agreed to by the parties").

None of the verbal modifications guaranteeing partnership, exclusive of Watson's which promised performance within one year, specify the specific date for performance. (R. p. 1112, line 11-p. 1113, line 25; p. 1226, lines 2-21; p. 3103). Given that no specific date was given, only that partnership would happen for Dr. Pridgen, it cannot reasonably be argued that performance within

[3] Dr. Pridgen maintains all of her previous arguments that this thirty-six-month timeline was later modified to an eighteen-month timeline.

a year was impossible. The portion of her contract permitting an opportunity for partnership at any time was never modified.

With performance within a year still possible, the statute of frauds cannot be applied. *Joseph,* 224 S.C. at 111, 77 S.E.2d at 586. And under any scenario, if the statute of frauds were applied to this case it would simply be used to protect against the fraud of Respondents' who have consistently represented to Dr. Pridgen that partnership would happen and have conspired to prevent that outcome from occurring.

Despite Respondents' assertions to the contrary, these verbal modifications also are supported by valid consideration from Dr. Pridgen. Throughout this time, Dr. Pridgen has given consideration by foregoing her legal right to retake tens of thousands of dollars' worth of property from the Respondents' possession, and by foregoing her legal right to end her employment with Respondents. (R. pp. 2552-2567; p. 1098, lines 9-21; p. 1161, lines 4-6). Respondents appear to contest Dr. Pridgen's right to end her employment in their brief by stating "Appellant tortures the language of her contract by arguing she 'could have chosen to exercise her legal right to terminate her contract of employment.'" (Colonial Brief, p. 14 citing Appellant's Brief, p. 25). However, Respondents in the immediately preceding sentence concede the issue entirely by stating that Dr. Pridgen's contract "gave Appellant the right to terminate her employment with Colonial at any time." (Colonial Brief, p. 14). Respondents cannot have it both ways.

Respondents' claim that "Appellant can point to nothing that changed with respect to her personal property as a result of the alleged verbal agreements, which are therefore unsupported by adequate consideration." (Colonial Brief p. 14). Notably, Respondents fail to cite to any applicable law for this proposition, or to any law in the discussion of consideration. South Carolina law is abundantly clear; an individual's position need not change for there to be adequate consideration.

The foregoing of a change in position, forbearance, is sufficient consideration for an oral contract to be enforceable. *Hennes v. Shaw,* 397 S.C. 391, 399, 725 S.E.2d 501, 505 (Ct. App. 2012) (quoting *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship,* 331 S.C. 385, 389, 503, S.E.2d 498, 499 (1945). Forbearance includes declining to exercise a legal right in a contract, such as Dr. Pridgen's legal right to end her employment pursuant to her contract. *Caine & Estes Ins. Agency, Inc. v. Watts,* 278 S.C. 207, 209, 293 S.E.2d 859, 861 (1982). Contract law in South Carolina recognizes this principle.

The facts of this case demonstrate that even in the absence of a right to purchase partnership in the written agreement, Dr. Pridgen's contract has been verbally modified to guarantee such a right. This modification is supported by valid consideration and is not barred by the statute of frauds. The lower court's decision to the contrary is against the law of our state, and the weight of the evidence, and should thus be reversed.

4. Dr. Baker's partnership purchase provides definite terms for a Dr. Pridgen partnership purchase.

As thoroughly discussed in Appellant's Brief, Dr. Pridgen's contract, and the verbal representations made before and after the execution of that contract, are sufficiently definite to create sustainable claims of breach of contract, contract modification, and promissory estoppel. (Appellants Brief, ps. 16-19, 28-29). Notably, Respondents' only argument against Dr. Pridgen's clear claim of promissory estoppel, is indefiniteness.

The contract and verbal agreements include the item to be purchased, the time of purchase, and in the case of Watson's promise, the quantity to be purchased. (R. pp. 2552-2567); (R. p. 1892, line 21-p. 1893, line 4; p. 3108; p. 1066, line 12-p. 1070, line 22; p. 1080, lines 7-14, p. 1088, lines 3-8; p. 1089, lines 18-21; p. 1090, lines 1-7; p. 1092, lines 9-39; p. 1096, lines 18-24; p. 1112, line 11-p. 1113, line 25; p. 1133, lines 3-6; p. 1226, lines 2-21; p. 1448, line 12-p. 1450, line 8; p. 3103;

Watson Recording). To the extent that any further terms are needed, the Court and jury need look no further than the partnership acquisition contract of Dr. Baker. (R. pp. 2452-2532; pp. 2533-2551). Dr. Baker is a comparable employee with Dr. Pridgen. Dr. Baker was brought into the medical practice shortly before Dr. Pridgen. (R. p. 1140, lines 2-14). Dr. Baker worked under an employment contract nearly identical to Dr. Pridgen's. (R. p. 1823, lines 6-16). Dr. Baker was made partner at the same time that Dr. Pridgen was promised partnership. (R. pp. 2452-2532; pp. 2533-2551; Watson Recording). Watson went so far as to promise "we're making an exception for you and another doc." (Watson Recording). That other doctor was Dr. Baker. In fact, internal emails from Respondents' reveal that Dr. Pridgen and Dr. Baker's partnership was often discussed jointly. (R. p. 1888, lines 6-22); (R. pp. 2568-2590); (R. pp. 3722-3799). The only discernable difference between their situations is the outcome; they were both promised the same thing, but only the promise to Dr. Baker was fulfilled.

In eighty-one pages, Dr. Baker's contract for partnership acquisition details in painstaking clarity each and every possible term to partnership needed to rebut Respondents arguments about indefiniteness. (R. pp. 2452-2532; pp. 2533-2551). It shows that Dr. Baker invested the same $100,000 dollar maximum that Watson promised Dr. Pridgen. (R. pp. 2452-2532; pp. 2533-2551; Watson Recording [Dr. Pridgen: "How much can I invest?" Watson: "$10,000 to $100,000"]). Dr. Baker's contract acts as supplementary evidence of any alleged missing term in this case and renders all arguments of indefiniteness as null. The lower court's grant of summary judgment on grounds of indefiniteness is thus in contradiction to the significant evidence in the record, and should be reversed.

5. <u>Varsity and Family Care Partners controlled the medical practice, and are now improperly abusing the corporate form to escape liability.</u>

Varsity and Family Care Partners are also liable for the breach of Dr. Pridgen's contract and the verbal modifications thereto under the theory of amalgamation, also known as "single enterprise theory," under which the Court may hold multiple interrelated entities liable for one another's wrongdoing. *Kincaid v. Landing Development Corp.*, 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986). The key factors to consider under this theory are control, and intertwined nature of the corporations. *See e.g., Mid-South Mgmt. Co. v. Sherwood Dev. Corp.*, 373 S.C. 588, 649 S.E. 135 (Ct. App. 2007).

There is overwhelming evidence in this case showing the intertwined nature of these corporations and the control that Varsity and Family Care Partners held over Colonial. The acquisition and merger agreements, in which Varsity took control of Colonial and in the process created Family Care Partners, details the complex and substantial nature in which Varsity and Family Care Partners took controlling power over Colonial. (R. pp. 3000-3081). The deponents testified to Varsity's control and intertwined nature of the entities. Watson testified that:

> A...I wasn't the decision maker. The chief medical officer and the board would have been, not me.
>
> Q. And you were on the board?
>
> A. I was on the board, but I didn't have the controlling voting rights. I could have said whatever I wanted, it wouldn't have mattered.
>
> Q. And who do you consider to have the controlling voting rights?
>
> A. **Varsity had controlling voting rights on the board**.

(R. p. 1668, line 18 - p. 1669, line 2). Dr. Soto, who is one of the partners, testified as follows:

> A. **When Varsity bought us, we had no say** or at least I felt like we had no say, so no.

Q. Have you personally ever sought to take action towards Dr. Pridgen becoming a partner?

A. It wasn't my place to do anything. I couldn't make decisions on anything. I don't think it mattered if I would have done anything.

...

Q: If you're not the decision marker, who do you attribute the decision maker to be with regard to Dr. Pridgen becoming partner?

*Objections from Defense Counsel

A: The decision makers, I guess at that moment, I can't remember if Tom Watson was still there, which was representing probably Varsity, And -- and the CEO for the Family Care Partners at that time, I would think that he would probably would be the one to make decisions. Honestly, I don't even know who would make decisions. Dave Alpern? I don't know if Dave Alpern had anything to do with it. I don't really honestly don't know. All I -- when we went to the -- to meetings with them, it was informative, it was never to ask me questions, what did I think or, you know, what to do.

Q. And describe for me the meetings that you're referring to in that last response.

A. The meetings were whatever they had a -- meetings for us to come and find out what was happening with the practice.

Q. Who is the "they" that you're referring to in your testimony?

A. I guess whoever was in charge of Family Care Partners at the moment.

Q. Who do you believe was in charge of Family Care Partners at the time of those meetings?

Varsity Objection

A. The Varsity people and Clay Lowder.

(R. p. 2198, line 3 - p. 2200, line 4). Dr. Soto described that the practice was "sold to Varsity" and that Varsity controlled the business. (R. p. 2200, lines 24-35, p. 2205, lines 1-2; p. 2215, lines 12-19). When asked how he found about that Dr. Baker, a male physician comparator to Dr. Pridgen, was becoming a partner, Dr. Soto answered "That was during the time of Varsity so I guess **Varsity announced that *they* were going to allow him to become a partner**, but that's probably all I can

tell you." (R. p. 2226, lines 22-25). Dr. Lowder's testimony is much the same. (See R. p. 1781, line 14-p. 1792, line 23; p. 1825, line 9-p. 1829, line 19; p. 1841, line 11-p. 1842, line 24; p. 1844, line 5-p. 1846, line 18). Dr. Lowder described it as follows:

> Q. From the transaction with Varsity, what benefit did the partners of Colonial receive?
>
> A. What do you mean "benefit"?
>
> Q. Financial in nature?
>
> A. Yeah. Well, they kind of purchased part of our practice and like -- they purchased like 61 percent of our practice. I'm sorry, they purchased the whole practice, and then we rolled back 39 percent. I'm a doctor so I don't know financial, but they ended up owning 61 percent and we owned 39 percent, the partners did.

(R. p. 1845, lines 15-25).

> Q. Which doctor is the most recent that has -- at Colonial that has been designated as a partner?
>
> A. I can't remember which one was last, Dr. Katz or Dr. Baker.
>
> Q. When Dr. Katz and Dr. Baker became partners, was there a vote?
>
> A. I don't remember.
>
> Q. When Dr. Katz and Dr. Baker became partners, who were the decision-makers?
>
> A. I guess the board. I guess Dave Alpern and Tom Watson and the board.
>
> Q. And I think you've identified Dave Alpern as the chairman. What was Tom Watson's role at the time of that decision-making?
>
> A. He was the CEO.
>
> Q. Would that be of Varsity?
>
> A. I think he was CEO of Family Care Partners.

(R. p. 1789, lines 2-18).

Varsity and Family Care Partner's control over the medical practice is evidenced by the above record as reaching the level of total domination and line blurring the Court has frequently

discussed in terms of the amalgamation theory. *Mid-South Mgmt. Co.,* 374 S.C. 588, 649 S.E.2d 135. Respondents are correct in that there is massive confusion among the deponents as to who worked for who and when, which company was making which decision, who they were talking to, when individuals were acting in one capacity as opposed to another, and even by which name the practice should be referred. (Colonial Brief, p. 22-23). The total confusion among the most well-informed individuals in the medical practice, about the nature of these entities, is a real manifestation of the inseparable, intertwined nature of these corporations. These corporations exist on paper as separate, but in practical terms operated as one, single medical practice when denying Dr. Pridgen partnership.

This case further meets the requirement of "bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities legal distinctions" prescribed in *Pertuis v. Front Roe Rests., Inc.,* 423 S.C. 640, 655, 817 S.E.2d 273, 281 (2018). This case is exactly the kind imagined by *Pertuis*. The individuals of the medical practice have engaged in bad faith, fraud, and wrongdoing by consistently representing to Dr. Pridgen that she was guaranteed an opportunity to purchase partnership, and yet never making good on their agreement. (R. p. 1892, line 21-p. 1893, line 4; p. 3108; p. 1066, line 12-p. 1070, line 22; p. 1080, lines 7-14; p. 1088, lines 3-8; p. 1089, lines 18-21; p. 1090, lines 1-7; p. 1092, lines 9-39; p. 1096, lines 18-24; p. 1112, line 11 - p. 1113, line 25; p. 1133, lines 3-6; p. 1226, lines 2-21; p. 1448, line 12 - p. 1450, line 8 ; p. 3103; Watson Recording).

Now, throughout this litigation, Respondents have sought to use their complex corporate structure to shield each other from liability. Each entity points at another and claims innocence in a circular chain that ends with no one liable. Colonial claims there was no partnership available

because only Family Care Partners could offer partnership.[4] The individuals from the Family Care Partners board claim that Varsity controlled the vote of the board.[5] Varsity claims that it employs no one, and no individual made decisions relating to the board in a Varsity-representative capacity.[6] Family Care Partners and Varsity both point the finger back at Colonial as responsible for the original contract[7], to which Dr. Lowder, managing partner of Colonial, claims only Varsity and Family Care Partners could actually perform.[8] It is exactly this blurred corporate structure of the medical practice, which each entity has used to try and escape liability for the wrongs that the Respondents have committed against Dr. Pridgen. This is exactly the situation for which the amalgamation doctrine was designed to bring justice. All of the Respondents should be liable for

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[4] "In December 2015, Colonial was involved in a series of complex transactions after which Colonial's sole member was Dr. Clay Lowder ('2015 Transaction'). Lowder Dep., Exhibit 2, at 24:14-22 (testifying the transaction occurred in December 2015); 40:2-5 (testifying Colonial 'is a medical practice only. It is not a holding company. And so it doesn't ... have partners.')." (R. pp. 265-283; see also pp. 1781-1798).

[5] "Q: Who do you believe was in charge of Family Care Partners at the time of those meetings? Varsity Objection. A: The Varsity people and Clay Lowder." (R. p. 2199, line 3 – p. 2220, line 4).

[6] "Plaintiff's consideration for partnership in FCPH was solely and exclusively within the control of FCPH and the FCPH Board of Directors, not Varsity. Varsity was simply an investment entity in the Transaction." (R. p. 687).

[7] "There is no evidence that Appellant's Employment Agreement was ever acquired or assigned to Varsity, Family Care Partners, or any other person or entity." (Colonial Brief, p. 18).

[8] "Q: When Dr. Katz and Dr. Baker became partners, was there a vote?

A: I don't remember.

Q: When Dr. Katz and Dr. Baker became partners, who were the decision-makers?

A: I guess the board. I guess Dave Alpern and Tom Watson and the board.

Q: And I think you've identified Dave Alpern as the chairman. What was Tom Watson's role at the time of that decision-making?

A: He was the CEO.

Q: Would that be of Varsity?

A: I think he was CEO of Family Care Partners."

(R. p. 1789, line 2-18).

the failure to make Dr. Pridgen partner. The lower court's decision is contrary to both the evidence in the record and the law of this State; thus, summary judgment should be reversed.[9]

CONCLUSION

Appellant Dr. Kaoru Pridgen respectfully asks this Honorable Court to Reverse the holdings of the Circuit Court issued in the December 20, 2019 Orders and Remand this case for the reasons discussed above in the record before the Court.

Respectfully Submitted,

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[9] Appellant does not abandon her negligent misrepresentation argument and individual defendant liability argument applicable to Dr. Lowder, Dr. Katz, and Watson. Appellant has already fully briefed her position and to do so again in this Reply Brief would simply be repetitive. Appellant's position is fully briefed in the Appellant's Brief and Memoranda in opposition to summary judgment. Also, Appellant is not filing a separate Reply Brief to Dr. Katz's Respondent Brief. To the extent Dr. Katz is implicated in the December 20, 2019 Order, Appellant's position is articulated in the previous briefing and herein.