

EXHIBIT A

BACKGROUND

This action was originally filed in federal district court against the Defendant on January 2017 alleging various claims to include her state law claim for breach of contract based upon Defendant's unlawful termination of her employment.

On April 28, 2018, the federal magistrate judge issued a Report and Recommendation which recommended dismissal on all of Plaintiff's claims except for Plaintiff's state based contract claim. The magistrate declined federal jurisdiction over the state law claims. This recommendation was adopted by the Judge Norton who was the assigned Federal District Court judge. The order was, in itself, somewhat ambiguous as to whether Plaintiff's claims had been dismissed. Plaintiff filed an appeal to the Fourth Circuit Court of Appeals. This appeal was ultimately dismissed incorporating the reasoning of the District Court and declining jurisdiction over Plaintiff's state based contract claim.

As a result of the District Court declining jurisdiction over Plaintiff's state law claims, Plaintiff filed the instant case on September 6, 2018 to which Defendant filed a Motion to Dismiss. The Court rules on this Motion as follows.

I. Breach of Contract Claim

As her only remaining cause of action, the Plaintiff alleges a breach of contract action based upon provisions of the Medical University Hospital Authority Handbook. The Plaintiff alleges that "during the course of her employment, Plaintiff relied on the specific promises contained in Defendants' Employee Handbook along with other policies and procedures of the Defendant. *See*, Complaint, ¶ 25.

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." *Carolina Amusement Co., Inc. v. Connecticut Nat. Life Ins. Co.*, 313 S.C. 215, 220, 437 S.E.2d 122, 125 (Ct.App.1993), quoting *Benya v. Gamble*, 282 S.C. 624, 628, 321 S.E.2d 57, 60 (Ct.App.1984). A contract may arise from oral or written words or by conduct. *Gaskins v. Blue Cross-Blue Shield of South Carolina*, 271 S.C. 101, 245 S.E.2d 598 (1978).

In the employment context, South Carolina Courts have already recognized that a contract altering the at-will arrangement may arise, in part, from the oral or written statement of the employer. A contract may arise from actual agreement of the parties manifested by words, oral or written, or by conduct. *Prescott v. Farmers Tel. Co-op., Inc.*, 335 S.C. 330, 335, 516 S.E.2d 923,926 (1999) (emphasis added); *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432,439 (Ct.App.2003).

In order to prove the existence of a definite contract of employment, the employee must establish all of the elements of a contract. Most employment agreements are unilateral. *Small v. Springs Industries, Inc.*, *supra*. A unilateral contract has the following three elements: 1) a specific offer, 2) communication of the offer to the employee, and 3) performance of job duties in reliance on the offer. 82 Am.Jur.2d Wrongful Discharge § 84 (1992). "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." *Carolina Amusement Co., Inc. v. Connecticut Nat. Life Ins. Co.*, *supra*, at 220, 437 S.E.2d 122, S.E.2d at 125, quoting Restatement (Second) of Contracts § 24 (1981). "The offer identifies the bargained for exchange and creates a power of acceptance in the offeree." *Carolina Amusement Co., Inc. v.*

Connecticut Nat. Life Ins. Co., supra, at 220, 437 S.E.2d 122, S.E.2d at 125, quoting Restatement (Second) of Contracts § 29 (1981).

"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." *Carolina Amusement Co., Inc. v. Connecticut Nat. Life Ins. Co.*, supra, at 220, 437 S.E.2d 122, S.E.2d at 125, quoting *Broadway v. Jeffers*, 185 S.C. 523, 530-31, 194 S.E. 642, 645 (1938). 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." *McLaurin v. Hamer*, 165 S.C. 411, 420, 164 S.E. 2, 5 (1932).

In general, an at-will employee may be terminated at any time for any reason or for no reason, with or without cause. *108 *Stiles v. Am. Gen. Life Ins. Co.*, 335 S.C. 222, 224, 516 S.E.2d 449, 450 (1999). But when an employee's at-will status has been altered by the terms of an employee handbook, an employee, when fired, may bring a cause of action for wrongful discharge based on breach of contract. *Conner v. City of Forest Acres*, 348 S.C. 454, 463, 560 S.E.2d 606,610 (2002). If an employer wishes to issue an employee handbook or manual without being bound by it and with a desire to maintain the at-will employment relationship, the employer must insert a conspicuous disclaimer into the handbook. *Small v. Springs Indus., Inc.*, 292 S.C. 481, 485, 357 S.E.2d 452, 455 (1987).

The issue of whether an employee handbook constitutes a contract should be submitted to the jury when the issue of the contract's existence is questioned, and the evidence is either conflicting or is capable of more than one inference. *Small*, 292 S.C. at 483, 357 S.E.2d at 454; *Williams v. Riedman*, 339 S.C. 251, 259, 529 S.E.2d 28, 32 (Ct.App.2000). In most instances, judgment as a matter of law is inappropriate when a handbook contains both a disclaimer and promises. *Fleming v. Borden*, 316 S.C. 452, 464, 450 S.E.2d 589,

596 (1994). But a “ ‘court should intervene to resolve the handbook issue as a matter of law ... if the handbook statements and the disclaimer, taken together, establish beyond any doubt tha[t] an enforceable promise either does or does not exist.’ ” Id. (quoting Stephen F. Befort, *Employee Handbooks and the Legal Effect of Disclaimers*, 13 *Indus. Rel. L.J.* 326, 375-76 (1991-92)); cf. *Horton v. Darby Elec. Co.*, 360 S.C. 58, 67-68, 599 S.E.2d 456, 461 (2004) (holding, as a matter of law, that a handbook containing conspicuous disclaimers and a non-mandatory discipline procedure did not alter at-will status).

To be enforceable in contract, general policy statements must be definitive in nature, promising specific treatment in specific situations. See, e.g., *Ex parte Amoco Fabrics & Fiber Co.*, 729 So.2d 336, 339 (Ala.1998) (“[to] become a binding promise, the language used in the handbook ... must be specific enough to constitute an actual offer rather than a mere general statement of policy”) (internal quotations omitted); *Ross v. Times Mirror, Inc.*, 164 Vt. 13, 665 A.2d 580, 584 (1995) (“[o]nly those policies which are definitive in form, communicated to the employees, and demonstrate an objective manifestation of the employer's intent to bind itself will be enforced”); cf. *Bookman v. Shakespeare Co.*, 314 S.C. 146, 148-49, 442 S.E.2d 183, 184 21 Ct.App.1994). *Hessenthaler v. Tri-County Sister Help, Inc.* 365 S.C. 101, 616 S.E.2d 694 S.C.,2005.

The Defendant argues that the Plaintiff cannot state a cause of action for breach of contract because the handbook does not create a unilateral contract of employment. This presents a question of law to be determined by the Court. At this juncture, the Court looks to the pleadings to determine whether Plaintiff has pled a valid cause of action for breach of contract.

In sum, the Court finds as a matter of law that the Plaintiff has pled a valid claim for breach of contract. It is apparent from the language in the Complaint that Plaintiff has fully pled

her breach of contract claims. Specifically, the Complaint indicates the specific contractual provisions, discusses her reliance upon them, and discusses how the provisions were breached. The contract alleged by Plaintiff is in writing, thus satisfying the statute of frauds. Defendant's Motion to Dismiss should therefore be denied based upon these grounds.

In addition to arguing that Plaintiff has failed to allege a valid breach of contract claim, the Defendant also alleges that Plaintiff's Complaint should be dismissed based on the legal theories of *res judicata*, claim preclusion and issue preclusion. All of these claims require an adjudication on the merits. This Court holds that there has been no final adjudication on the merits in this case.

Although Plaintiff's Federal Claims were dismissed in this case, it is clear that the District Court Judge, in his Order, contemplated Judge McDonald's opinion that the Court decline to exercise jurisdiction over Plaintiff's state law claims for breach of contract. Defendant attempts to rely on Plaintiff's appeal of the ruling of the Federal District Judge as a basis for its allegation that Plaintiff's state court pleadings are *res judicata*, judicially estoppel, or violative of SCRCP 12(B)(1). This is not the case.

The Defendant's attempt to dismiss Plaintiff's claims based on Plaintiff having appealed the ruling of the District Court's dismissal of her claims is, likewise, misplaced. The Magistrate's Report and Recommendation is ambiguous as to which alternative the District Court should take. These ambiguities were incorporated into the District Court Order by Judge Norton. This is not a case where Plaintiff has taken two different views of the facts (even so, doing such would go more to the weight of the evidence and impeachment), rather it is a case where there is an ambiguous order which provides the potential for two venues available to Plaintiff to resolve her case. This is purely a jurisdictional matter.

The Federal Court Order presented two alternative outcomes without either being chosen definitively by the Court. Plaintiff's appeal was dismissed, but this dismissal also takes into account the fact that the District Court declined jurisdiction over the contract-based claims. The dismissal was procedural in nature. Plaintiff should, therefore, is not barred from proceeding with her state court claims. This Court therefore rules that the Defendant's motion to dismiss be denied.

IT IS, THEREFORE, ORDERED that the Defendant's motion to dismiss is denied.

AND IT IS SO ORDERED.

May 28, 2020

s/ Bentley Price
Circuit Court Judge,
Ninth Judicial Circuit



Charleston Common Pleas

Case Caption: Christine Nelson VS Medical University Hospital Authority

Case Number: 2018CP1004377

Type: Order/Dismissal

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766