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**Dec 23 2020**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
In the Supreme Court

CERTIFICATION OF QUESTIONS OF LAW  
United States District Court for the District of South Carolina

The Honorable Timothy M. Cain

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Appellate Case No. 2020-001195

Curt O. Hall, ..... Plaintiff,

v.

UBS Financial Services Inc. and Mary Lucy Reid,.....Defendants.

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**PLAINTIFF’S BRIEF**

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## **CERTIFIED QUESTIONS**

- I. ARE TERMINABLE-AT-WILL EMPLOYMENT RELATIONSHIPS CONTRACTUAL IN NATURE AS A MATTER OF LAW?
- II. DOES THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING ARISE IN THE CONTEXT OF TERMINABLE-AT-WILL EMPLOYMENT RELATIONSHIPS, AND CAN AN EMPLOYER'S TERMINATION OF AN AT-WILL EMPLOYEE CONSTITUTE A BREACH OF THE RELATIONSHIP SUCH THAT IT MAY GIVE RISE TO A CLAIM BY THE FORMER EMPLOYEE AGAINST THE EMPLOYER FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING?
- III. CAN AN EMPLOYER'S TERMINATION OF AN AT-WILL EMPLOYEE, WHICH RESULTS FROM A THIRD-PARTY EMPLOYEE'S REPORT TO THE EMPLOYER, CONSTITUTE A BREACH OF THE RELATIONSHIP SUCH THAT IT MAY GIVE RISE TO A CLAIM BY THE FORMER EMPLOYEE AGAINST THE THIRD-PARTY EMPLOYEE FOR TORTIOUS INTERFERENCE WITH A CONTRACTUAL RELATIONSHIP?

## **STATEMENT OF THE CASE**

On or about August 24, 2020, the Honorable Timothy M. Cain of the United States District Court certified three questions to the South Carolina Supreme Court. The three certified questions were as follows:

1) Are terminable-at-will employment relationships contractual in nature as a matter of law?;

2) Does the implied covenant of good faith and fair dealing arise in the context of terminable-at-will employment relationships, and can an employer's termination of an at-will employee constitute a breach of the relationship such that it may give rise to a claim by the former employee against the employer for breach of the implied covenant of good faith and fair dealing?; and

3) Can an employer's termination of an at-will employee, which results from a third-party employee's report to the employer, constitute a breach of the relationship such that it may give rise to a claim by the former employee against the third-party employee for tortious interference with a contractual relationship?

On or about October 16, 2020, the South Carolina Supreme Court issued its Order deciding to answer the certified questions.

## **STATEMENT OF FACTS**

Plaintiff Curt O. Hall (“Plaintiff”) recites the Background and Factual Findings from the Honorable Timothy M. Cain’s Order of Certification as if restated verbatim herein. Plaintiff would further state that he was not an at-will employee of Defendant UBS Financial Services Inc. (“UBS”) and does not concede same.

## CERTIFIED QUESTIONS

### **I. ARE TERMINABLE-AT-WILL EMPLOYMENT RELATIONSHIPS CONTRACTUAL IN NATURE AS A MATTER OF LAW?**

Assuming, *arguendo*, that Plaintiff was an at-will employee of UBS, which Plaintiff disagrees, Plaintiff responds to the certified question as follows:

“The necessary elements of a contract are an offer, acceptance, and valuable consideration.” *Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct.App.2009) (*quoting Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct.App.1997)). In each and every at-will employment engagement, there is: 1) an offer by the employer to pay the prospective employee a certain rate to perform a certain service; 2) an acceptance by the prospective employee to perform the specified service for the specified rate; and 3) payment by the employer to the employee per those terms. Accordingly, at-will employment is, of course, contractual in nature as a matter of law. *Id. and See Glover v. Lockheed Corp.*, 772 F.Supp. 898 (D. S.C. 1991) (“*Employment relations are necessarily contractual, even if the employment is on an at will basis, as here. Consequently, because some sort of contract exists in every employment arrangement...*”)

### **II. DOES THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING ARISE IN THE CONTEXT OF TERMINABLE-AT-WILL EMPLOYMENT RELATIONSHIPS, AND CAN AN EMPLOYER'S TERMINATION OF AN AT-WILL EMPLOYEE CONSTITUTE A BREACH OF THE RELATIONSHIP SUCH THAT IT MAY GIVE RISE TO A CLAIM BY THE FORMER EMPLOYEE AGAINST THE EMPLOYER FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING?**

Assuming, *arguendo*, that Plaintiff was an at-will employee of UBS, which Plaintiff disagrees, Plaintiff responds to the certified question as follows:

The black letter law in South Carolina is clear: "Under South Carolina law, there exists in every contract an implied covenant of good faith and fair dealing." *See Shelton v. Oscar Meyer Foods Corp.*, 459 S.E.2d 851, 319 S.C. 81 (S.C. App. 1995) (*citing Parker v. Byrd*, 309 S.C. 189,

420 S.E.2d 850 (1992) (citing *Tharpe v. G.E. Moore Co.*, 254 S.C. 196, 201, 174 S.E.2d 397, 399 (1970) (citing *Commercial Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 147 S.E.2d 481 (1966))). As at-will employment is contractual in nature, it is a contract wherein the implied covenant of good faith and fair dealing exists. *Id.*

Further, the *Keiger v. Citgo, Coastal Petroleum, Inc.* case and its progeny, as cited by the Honorable Timothy M. Cain, erroneously find the language of the *Shelton v. Oscar Meyer Foods Corp.* case, stating “[f]urther, we find no authoritative case law holding the implied covenant of good faith and fair dealing is not applicable to employment contracts that alter the employee's at-will status”, implies, and therefore establishes, that the implied covenant of good faith and fair dealing only exists when an at-will employee’s status is altered. *See Keiger v. Citgo, Coastal Petroleum, Inc.*, 326 S.C. 369, 482 S.E.2d 792 (S.C. App. 1997) and *See Shelton v. Oscar Meyer Foods Corp.*, 459 S.E.2d 851, 319 S.C. 81 (S.C. App. 1995). A plain reading of the text, however, shows that the *Shelton* Court was simply stating that there was no case law holding that the implied covenant of good faith and fair dealing was not applicable to the case’s fact scenario, and hence, it was applicable. *Id.* There was certainly no finding in *Shelton* that the alteration of an employee's at-will status triggered the implied covenant of good faith and fair dealing. *Id.*

Accordingly, in accordance with long standing South Carolina law, an implied covenant of good faith and fair dealing exists in all at-will employment agreements. *See Shelton v. Oscar Meyer Foods Corp.*, 459 S.E.2d 851, 319 S.C. 81 (S.C. App. 1995).

**III. CAN AN EMPLOYER'S TERMINATION OF AN AT-WILL EMPLOYEE, WHICH RESULTS FROM A THIRD-PARTY EMPLOYEE'S REPORT TO THE EMPLOYER, CONSTITUTE A BREACH OF THE RELATIONSHIP SUCH THAT IT MAY GIVE RISE TO A CLAIM BY THE FORMER EMPLOYEE AGAINST THE THIRD-PARTY EMPLOYEE FOR TORTIOUS INTERFERENCE WITH A CONTRACTUAL RELATIONSHIP**

Assuming, *arguendo*, that Plaintiff was an at-will employee of UBS, which Plaintiff disagrees, Plaintiff responds to the certified question as follows:

For the reasons set forth in Plaintiff's response to Question 2, above, regarding the erroneous findings of Keiger and its progeny as well as the clear holding of Todd, it is clear that at-will employment is a contract upon which an action for intentional interference may be brought. *See Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 321 S.E.2d 602 (S.C. App. 1984) (*stating "we hold that a contract terminable at will is a contract upon which an action for intentional interference may be brought."*)

**CONCLUSION**

For the foregoing reasons, Plaintiff Curt O. Hall respectfully asks that this Court answer each certified question in the affirmative.

Respectfully submitted,



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