

The South Carolina Supreme Court Issues an Important Decision on the Viability of Legal Claims by Former Employee for Termination of At-Will Employment

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12.06.2021

On December 1, 2021, the South Carolina Supreme Court answered three certified questions from the United States District Court for the District of South Carolina that provide clarification on the legal rights stemming from the at-will employment relationship, including its termination, and a third party's potential liability for interfering with such a relationship. The S.C. Supreme Court's decision in *Hall v. UBS Financial Services Inc. et. al.* (S.C. Supreme Court Opinion No. 28068), has significance for all employers in South Carolina, including the health care industry in which at-will employment relationships are common.

Questions Presented by the United States District Court to the S.C. Supreme Court:

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 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?
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 contractual relationship? *(Note - The Court revised this question in the text of the decision as follows: "Can an employer's termination of an at-will employee, which results from a third-party employee's report to the employer, give rise to a claim by the*

terminated employee against the third-party employee for tortious interference with contractual relationship, even when the termination itself was not a breach of the at-will contract?”)

In *Hall*, a former employee of UBS sued UBS and one of his former co-workers arising from UBS’s termination of his employment with the company. Plaintiff Hall’s claims against UBS include a cause of action for the breach of the implied covenant of good faith and fair dealing that he argues is part of all at-will employment relationships in South Carolina. Hall’s suit against the former co-worker Defendant Reid includes a cause of action that alleges Reid’s report to UBS about Hall’s conduct leading to his termination was a tortious interference with his at-will employment at UBS.

It is not necessary to discuss the alleged factual details underpinning this case. The S.C. Supreme Court’s answers to the three questions presented by the District Court are based on an in-depth legal analysis that should provide for consistent application across any fact pattern presented in which a terminated at-will employee sues his former employer for breach of the implied covenant of good faith and fair dealing, and/or sues a third party for interfering with that at-will employment relationship.

The S.C. Supreme Court held in *Hall* that:

- At-will employment relationships are contractual, and accordingly, like any contractual relationship in South Carolina, include an implied covenant of good faith and fair dealing.
- Because at-will employment contracts allow the employer to discharge the at-will employee for “good reason, no reason, or bad reason” without liability, “it follows then that the implied covenant of good faith and fair dealing, while it exists in the at-will employment contract, does not infringe upon the employer’s right to do what the contract allows him to do – terminate the employee for any reason.” The Court went on to state, “The implied covenant of good faith and fair dealing exists in an at-will employment contract; however, the employer’s termination of the employee cannot form the basis of a claim that the employer breached the covenant of good faith and fair dealing.”
- A third party (not party to the at-will employment contract), however, may be liable to the terminated employee for tortious interference with the at-will employment contract, even if there is no underlying breach by the employer, if the third party intentionally and unjustifiably procures the termination of an at-will employee. In reaching this holding, the Court endorsed the South Carolina Court of Appeals’ recognition of the viability of such a claim in *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 163, 321 S.E.2d 602, 607 (Ct. App. 1984).

Two points to note: First, the Court leaves open a possible claim by an at-will employee against an employer for breach of the implied covenant of good faith and fair dealing provided the claim does not arise from the employer’s termination of the at-will employee. Second, the Court was not unanimous in its holding that a third party may be liable to a terminated employee for tortious interference with the at-will employment contract. Justice Few dissented from the majority’s answer on this question, finding that “The theory of intentional interference with contractual relations requires proof of more than mere inference with the contract; it requires the plaintiff prove ‘intentional procurement of [the contract’s] breach.’ *Eldeco, Inc. v. Charleston Cty. Sch. Dist.*, 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007). When an employer terminates an at-will employment contract, however, there can be no breach based on the termination. When there is no breach, there simply cannot be an ‘intentional procurement of [a] breach.’ As we held in *Eldeco, Inc.*, ‘Where there is no breach of the contract, there can be no recovery’ for tortious interference with contractual relations. 372 S.C. at 481, 642 S.E.2d at 732.” Justice Few went on to state that rather than a tortious interference claim, the

terminated at-will employee could pursue other claims against a third party whose report to the employer resulted in the termination, including a possible claim for defamation if the report was false. Going forward it will be interesting to see if the Hall decision opens the door wider to claims for tortious interference against a third-party outside of the employment at-will context when there is no underlying breach of contract.

Our law firm's health care practice group represents many health care employers, health care executives and physicians in various employment matters. I have no doubt that the Hall decision will be important precedent in advising health care clients on at-will employment relationships and claims that may arise from these relationships.