

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	Case No.: 2025-CP-10-2671
)	
ASSIGNMENT DESK WORKS, LLC,)	
)	
Plaintiff,)	PLAINTIFF’S MEMORANDUM IN
vs.)	SUPPORT OF PLAINTIFF’S MOTION
)	FOR SUMMARY JUDGMENT
ALEXIS BERG,)	
)	
Defendant.)	

Plaintiff, Assignment Desk Works, LLC (ADW), by and through its undersigned counsel, submits this Memorandum of Law in support of its Motion for Summary Judgment. As discussed more fully below, there is no genuine issue of material fact, and Plaintiff is entitled to judgment as a matter of law.

PROCEDURAL HISTORY

Plaintiff commenced this action by the filing of a Summons and Complaint on May 7, 2025, alleging causes of action for breach of contract and injunctive relief. The pleadings were personally served on May 13, 2025. On July 9, 2025, Defendant Alexis Berg (“Berg” or “Defendant”) filed a Motion to Dismiss. Plaintiff then, on September 25, 2025, filed an Amended Summons and Complaint, and Defendant filed a second Motion to Dismiss on October 10, 2025. The Court denied Defendant’s Motion on October 21, 2025. Defendant filed her Answer on October 29, 2025. Plaintiff filed a Motion for Summary Judgment on January 12, 2026, and the hearing on the Motion was continued until May of 2026, to allow additional discovery.

FACTUAL BACKGROUND

The parties previously entered into a Settlement Agreement and Release (“Agreement”) resolving prior litigation in the case of *Cockman et al. v. Assignment Desk Works, LLC, et al.*, Civil Action No. 2:19-v-3082-BHH. Compl. ¶ 5. (*Settlement Agreement*, PLTF 000051-000055,

attached as **Exhibit A**.) As a material term of the Agreement, Defendant was subject to a non-disparagement clause relating to ADW. Specifically, the Agreement states: “Each of the Plaintiffs agrees not to disparage or engage in disparaging conduct or defame, publicly or privately, any of the Defendants; provided, however, nothing in this Agreement shall preclude Plaintiffs from making truthful statements or from complying with any valid subpoenas or court orders.” **Ex. A.** ¶ 6.

On February 12, 2025, Defendant called Erin Gunther (“Gunther”), an employee of ADW. Gunther (*Affidavit of Erin Gunther* attached as **Exhibit B**; Recording of February 12, 2025 Phone Call incorporated as **Exhibit C**.) They had not spoken in more than five years. Gunther Aff. ¶ 2. The purpose of the call was so that Defendant could tell Gunther “her side of the story” rather than relying on media reports. (*December 15, 2025 Deposition of Alexis Berg* (“Berg Depo.”), attached as **Exhibit D**, p. 130, lines 5-9.)

During the call, Defendant related the details of an alleged incident from 2018 involving Patrick Bryant (“Bryant”), Eric Bowman (“Bowman”), John Osborne (“Osborne”), and herself. Gunther Aff. ¶¶ 4, 5, 6. Defendant told Gunther that, according to Nancy Mace, she had been sexually assaulted. Gunther Aff. ¶ 6. She also made the following disparaging statements about Bryant, in violation of the non-disparagement clause of the Agreement, including: “Patrick is like a really scary person and like its not okay what he has done and like in her speech I was like one of the victims from John Osborne and like what he did to me and there is video footage of it, there’s like so much evidence of it and I just want to let you to know that like its not bullshit, its not like – yes Nancy has like political stuff whatever like I keep my arms distance from her just knowing her position – but like there is very clear evidence that like Patrick and Eric filmed me while I was being assaulted by John when I completely unconscious, I have no memory of it, and I just wanted to let you know that like its not, its not, not true. (**Ex. C.** at 2:33-3:40). When Gunther doubted the

existence of the video, Berg responded by admitting she did not have the video but falsely claimed she had a screen shot from the video: “Gunther: but like you haven’t you haven’t seen this video. Berg: “I haven’t seen the video, because I do not have the video but we probably will get it or something, but there is a screenshot. My attorney has a screenshot of me passed out naked on the couch.” (Ex. C at 15:36-15:54) “I don’t know why you are doubting it. Like I haven’t seen the videos but I know they’re there. Like I know the metadata is there and I know that SLED is investigating.” (Ex. C. at 21:00-21:07). “I don’t know its just like, I don’t trust anyone like: my attorneys, Nancy, whatever but what I do trust is like this happened, I know that this happened to me.” (Ex. C at 49:40-49:55.)

On June 6, 2025, Defendant participated in a phone call with SLED in which she was told that no video of the alleged assault had been located. “Marybeth Mullany: I’d like to know, do you have the video? SLED Agent: We are still looking for, we are still reviewing data...not at this point, no Ma’am.” (*June 6, 2025 SLED Phone Call Recording* incorporated as Exhibit E at 00:35-00:55.)

During discovery, Defendant has confirmed that she still has not seen the video: “I think it’s well established that I do not have a video of me being sexually assaulted and neither does Nancy.” Berg Depo. p. 148, line 24 – p. 149, line 1. As part of her discovery responses, Defendant produced two screenshots of security camera footage received from Melissa Britton. (PLTF 00048-000049 attached as Exhibit F.) The screenshots are not taken from the video, as Defendant represented to Gunther, and the screenshots do not depict Patrick Bryant recording Plaintiff. (Ex. F.) The court previously ordered all parties to produce evidence in their possession pertaining to the night the video was allegedly taken, and no party produced to the court the video Defendant told Erin Gunther existed.

Additionally, discovery has further established that the Gunther call was not isolated. Defendant made more than seventy disparaging communications to at least twelve identified third parties, across text messages, recorded calls, and emails, falling into two categories. Defendant called Bryant, among other things, a 'snake,' 'demented,' a 'narcissist,' 'manipulative,' 'sneaky,' a 'liar,' a 'piece of shit,' 'the sleaziest or maybe most dangerous one,' and 'extremely calculated'; ascribed 'sociopathy' to him and grouped him with Bowman as 'psychos' who are 'not safe to be around ever'; and endorsed Sam Staley's characterization of Bryant as a 'fucking weasel,' replying 'Literally fuck him.' Mace-Berg text messages, DEF_000824 to DEF_000831; Mace-Berg first call, DEF_000832; Berg-Chesa text messages, PLTF_000072 to PLTF_000073; Berg-Alexa text messages, PLTF_000169 to PLTF_000173; Berg-Staley text messages, PLTF_000194 to PLTF_000204; Berg-Ben text messages, PLTF_000154. (Referenced *Text Messages Produced by Berg* attached collectively as **Exhibit G.**; DEF_000203 as Exhibit G.9.

Defendant told third parties that ADW projects a 'big facade of like, we're great. We take care of our employees,' while 'underneath, there's things that are not great,' that the company engaged in 'wage theft' and unpaid overtime, that her manager 'harassed' her by demanding email responses within ten minutes at 9 p.m., and that ADW was 'pressuring' former employees 'to drop the lawsuit,' conduct she characterized as potential 'abuse of process.' Defendant described the workplace as so unsafe that women should not work there 'whether you're like at Go To Team or Assignment Desk,' told Gunther she 'worr[ied] about the girls that work with him' and that 'those girls have every right ... to be nervous about working in that environment,' told Lisa that 'female co-workers who used to work for him' are 'terrified,' told Katherine that 'SO MANY WOMAN are impacted. Hundreds of people at this point,' and told Chesa that 'some of my old coworkers had to stop watching ... because they were literally SICK TO THEIR STOMACH.' As to Shawn Moffatt personally, Defendant stated that 'the dynamic between Patrick and Shawn was always kind of

weird,' that Moffatt ran a workplace with 'pretty strict and kind of crazy' contracts, that Bryant 'kind of tried to just put everything on Shawn' for the underlying wage-and-hour misconduct, and that 'the whole thing with Erin/GTT/Shawn too is so fucking triggering.' Mace-Berg text messages, DEF_000824 to DEF_000831; Mace-Berg first call, DEF_000832 at 2:41-3:34 and 4:02-4:57; **Ex. C.** at 18:27, 22:37, 27:42, and 29:44; Berg-Chesa text messages, PLTF_000072 to PLTF_000073; Berg-Lisa text messages, PLTF_000132; Berg-Katherine text messages, PLTF_000162 to PLTF_000168. (All part of **Ex. G.**); DEF_000203 as Exhibit G.9; DEF_000210 attached as Exhibit G.10.

Defendant has admitted she made each of the foregoing statements. Berg Depo. p. 130, lines 5 to 9; p. 154, line 14 to p. 155, line 21; p. 283, line 19 to p. 284, line 1.

LEGAL STANDARD

Pursuant to Rule 56(c), SCRPC, the court should promptly grant summary judgment when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” “However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine. *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013) (citing *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006)). The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact but may discharge its initial burden by showing “there is an absence of evidence to support the nonmoving party’s case.” *Baughman v. Am. Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986)). “The moving party need not ‘support its motion with affidavits or other similar materials *negating* the opponent's claim.’” *Id.* (quoting *Celotex*, 477 U.S. at 323, 106 S.Ct. at 2553).

“The Supreme Court has recently explained that there is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted. Unsupported speculation is not sufficient to defeat a summary judgment motion.” *Felty v. Graves-Humphreys Co.*, 818 F.2d 1126, 1128 (4th Cir. 1987) (internal citations and punctuation omitted). “Since the South Carolina courts have adopted the Federal Court's reasoning, summary judgment is no longer a rare relief, sparingly granted, in the Courts of South Carolina. It is now an integral part of the South Carolina Rules of Procedure, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’” *David v. McLeod Regional Medical Center*, 2003 WL 2577945 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554 (1986) and *Bankers Trust of SC v. Benson*, 226 S.E.2d 703, 704 (S.C. 1976)).

ARGUMENT

Here, it is undisputed that Defendant made numerous and repeated disparaging statements to third parties in violation of the non-disparagement clause of the Agreement.

I. Plaintiff is Entitled to Summary Judgment on Its’ Claim for Breach of Contract.

The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach. *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). Here, it is undisputed that the parties here entered into a Settlement Agreement and Release to resolve a prior legal dispute. Furthermore, Defendant admits that she made disparaging statements regarding ADW and Bryant. Lastly, ADW has suffered harm as a direct result of Defendant’s breach of the Agreement. See Answers to Interrogatories. No. 10.

Although Plaintiff is not required to rebut Defendant’s baseless allegation that her statements were true, ADW would like to provide the court with an overview of not only why there

is no support for her claims, and she knows it, but also why it is not a basis to oppose defeat summary judgment. During the recorded call, Defendant told Gunther that Bryant was “a really scary person,” and that a video existed of her being assaulted by John Osborne on October 26, 2018, which was taken by Bryant. Defendant admits that she made the statement but contends this statement was true and therefore not a breach of contract because the Agreement allows Defendant to make “truthful statements” (Ex. A. at ¶6.) However, Defendant cannot rely on this affirmative defense for the undisputed reason that Defendant did not know her statements were true at the time she made them. Critically, the operative provision of the Agreement places the burden on Defendant to prove that her statements were true at the time she made them. The starting proposition is that “each of the Plaintiffs agrees not to disparage or engage in disparaging conduct or defame” and it is only an exception which provides that “nothing in this Agreement shall preclude Plaintiffs from making truthful statements.” (Ex. A. at ¶6.) Accordingly, the burden is not on Plaintiff to prove that Defendant’s statements were false, the burden is on *Defendant* to prove she knew the statements were both truthful and known to be true at the time she made them.

Defendant plainly did not know her statements regarding the video were true at the time she made them, because she admitted during the phone call that she had never seen the video. (Ex. C at 15:36-15:54; 21:00-21:07). Furthermore, the one reason Defendant possessed for believing (much less knowing) that the video existed was the unsupported claim of Nancy Mace – a woman who Defendant acknowledged at the time she did not trust. (Ex. C at 49:40-49:55). These admissions during the phone call to Gunther alone warrant summary judgment as they indisputably prove that Defendant violated the Agreement by making disparaging statements that were not true.

Moreover, over a year later Defendant still cannot point to evidence that can prove that a video existed and that her statements were therefore truthful. Defendant has testified “it is well established” that neither she nor Nancy Mace have this video. Berg Depo. p. 148, line 24 – p. 149,

line 1. SLED has also confirmed that they do not have such a video, and this court has been made well aware throughout the history of this case that no such video exists. Her claims regarding the existence of metadata and screenshots from the video are also false. The screenshots produced by Plaintiff (**Ex. F**) were not taken from the video she referenced in her phone call with Gunther and they do not depict Patrick Bryant recording her.

Accordingly, Defendant has failed to produce any evidence, much less merely colorable evidence, that there was any truth to her statements, such as to create a genuine issue of material fact. Plaintiff is therefore entitled to summary judgment for its cause of action for Breach of Contract.

Furthermore, the disparaging comments made by Defendant about Bryant in her text messages and elsewhere are self-evidently disparaging and not protected by the affirmative defense of truth.. Critically, Defendant's pejorative labels for Bryant, including 'snake,' 'demented,' 'sleaziest,' 'most dangerous,' 'piece of shit,' 'manipulative,' 'sneaky,' 'liar,' and 'extremely calculated,' her ascription of 'sociopathy' to him and grouping of him with Bowman as 'psychos,' and her endorsement of Sam Staley's 'fucking weasel' label, are not statements of fact capable of being true or false. They are invective. (see **Ex. G.**) The Agreement, by its terms, protects only statements that are capable of a truth determination; it does not authorize unrestricted name-calling. Defendant bears the burden of proving her statements were truthful, her subjective insults cannot be proven to be objectively true. Therefore, each pejorative comment listed above is an indisputable breach of the Agreement and a grant of Summary Judgment as to the Breach of Contract claim

In addition, Defendant's disparaging statements regarding ADW fall squarely within the restraints on communication contained in Agreement. These comments include Defendant's statements that ADW projects a 'big facade of like, we're great. We take care of our employees,' while 'underneath, there's things that are not great,' that ADW engaged in 'wage theft' and unpaid

overtime, that ADW 'harassed' employees with after-hours email demands, that ADW pressured former employees 'to drop the lawsuit' in conduct she characterized as 'abuse of process,' that ADW's workplace is so unsafe women should not work there 'whether you're like at Go To Team or Assignment Desk,' that female ADW employees are 'terrified' and 'SICK TO THEIR STOMACH,' that current female production coordinators should not 'be in the office,' and that 'hundreds of people' have been victimized in connection with ADW, all of which disparage ADW, the named 'Defendant' in the Agreement. (see **Ex. G.**) Likewise, Defendant's statements that the 'dynamic between Patrick and Shawn was always kind of weird,' that Moffatt personally ran a workplace with 'pretty strict and kind of crazy' contracts, that Moffatt bore responsibility for the underlying wage-and-hour misconduct because Bryant 'kind of tried to just put everything on Shawn,' and that 'the whole thing with Erin/GTT/Shawn too is so fucking triggering,' disparage Moffatt, also a named 'Defendant' in the Agreement. Several of these statements, including 'kind of weird,' 'pretty strict and kind of crazy,' and 'so fucking triggering,' are pure invective and unprotected by the truthful statement proviso for the reasons set out in the Agreement. The remainder are factual assertions of corporate wrongdoing and Defendant has produced no evidence to support the claimed veracity of her statement. Defendant took Plaintiff's money in exchange for the mutual Agreement and proceeded to deny Plaintiff the benefit of its bargain by widespread and extreme disparagement. Therefore, Plaintiff is entitled to summary judgment as a result of Defendant's breach of the Agreement..

The combined record therefore establishes that: (i) Defendant's factual statements are affirmatively false on the available evidence; and (ii) Defendant could not have known the statements were true when she made them because the evidence she now relied on (but had never seen) either does not exist or affirmatively contradicts her. The Agreement, by its plain terms, does not protect false statements made without contemporaneous knowledge of truth nor does it

protect pejorative statements at all.

II. Plaintiff is Entitled to Summary Judgment on its Cause of Action for Injunctive Relief.

“Actions for injunctive relief are equitable in nature. In equitable actions, an appellate court may review the record and make findings of fact in accordance with its own view of the preponderance of the evidence. To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law.” *Ray v. City of Rock Hill*, 428 S.C. 358, 368, 834 S.E.2d 464, 469 (Ct. App. 2019), aff’d as modified, 434 S.C. 39, 862 S.E.2d 259 (2021), and overruled on other grounds by *State v. Wallace*, 440 S.C. 537, 892 S.E.2d 310 (2023). The lower court has the authority to grant summary judgment on claim for injunctive relief as well as claim for breach of contract brought in the same civil action. *Saint Luke Baptist Church v. Terry*, No. 2022-000987, 2024 WL 4143399, at *5 (S.C. Ct. App. Sept. 11, 2024).

Plaintiff and its’ agent, Patrick Bryant, have suffered reputational harm as a direct result of Defendant’s disparagement of him to dozens of third parties, including a sitting member of Congress, current and former employees, and personal and business acquaintances. See Plaintiff’s Answer to Interrogatory No. 10, attached hereto as Exhibit H. Tdo the extent that the Court grants summary judgment on the Breach of Contract claim, Plaintiff has demonstrated actual success on the merits. There is no remedy at law to calculate and compensate ADW and Bryant for harm to their reputations, and it was exactly for this reason that Plaintiff bargained for the non-disparagement provision. These points are undisputed by Defendant.

The grant of injunctive relief simply acts to give court-ordered authority over the permanent restraints to which Defendant has already consent to uphold. Accordingly, Plaintiff is entitled to Summary Judgment on its’ cause of action for Injunctive Relief.

CONCLUSION

For the reasons stated herein and such arguments as may be submitted at the hearing, Plaintiff respectfully requests that the Court grant the following relief:

- a. Grant Plaintiff's Motion for Summary Judgment as to its claim for Breach of Contract; and
- b. Grant Plaintiff's Motion for Summary Judgment as to its claim for Injunctive Relief; and
- c. Set a hearing on for the determination of damages; and
- d. Grant any other relief the Court believes is just and necessary.

RESPECTFULLY SUBMITTED:

s/ Rene Stuhr Dukes

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