

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

ASSIGNMENT DESK WORKS,

Plaintiff,

vs.

ALEXIS BERG,

Defendant.

CASE NO. 2025-CP-10-2671

**DEFENDANT'S MOTION FOR
JUDGMENT ON THE PLEADINGS
PURSUANT TO RULE 12(c), SCRPC,
AND FOR ATTORNEYS' FEES, COSTS,
AND OTHER RELIEF**

Defendant Alexis Berg (“Ms. Berg”), by and through her undersigned counsel, moves pursuant to Rule 12(c), SCRPC, for judgment on the pleadings against Plaintiff Assignment Works Desk (“ADW”). It is apparent on the face of the pleadings that the nondisparagement clause ADW seeks to enforce is rendered unenforceable by the Speak Out Act, 42 U.S.C. § 19401 *et seq.* (“the Act”). No factual development is necessary. Judgment should be entered in favor of Ms. Berg, and the Court should award of attorneys' fees, court costs, and all expenses incurred in the defense of this action. In support thereof, Defendant states as follows:

STANDARD OF REVIEW

Rule 12(c), SCRPC, provides that after the pleadings are closed, any party may move for judgment on the pleadings. When evaluating a Rule 12(c) motion the court must take all well pleaded facts as true. See e.g. *Carolina Winds Owners' Ass'n, Inc. v. Joe Harden Builder*, 297 S.C. 74, 76, 374 S.E.2d 897, 899 (Ct. App. 1988), *Parker v. Estate of Franklin Lafayette*, 2019 S.C. C.P. LEXIS 3091. The court must determine whether, in the light most favorable to the non-moving party, the pleadings state any valid claim for relief. *130 Ocean Palms Ct., LLC v. Elm Grp. LLC*, 2024 S.C. C.P. LEXIS 473 (2024). If the pleadings present no issue of material fact or only immaterial issues, judgment on the pleadings may be granted. *Id.* Judgment on the pleadings is

appropriate when the pleadings are fatally deficient in substance or fail to state a good cause of action in favor of the plaintiff and against the defendant *Rosenthal v. Unarco Industries, Inc.*, 278 S.C. 420 (1982). Where, as here, the legal bar to relief appears on the face of the pleadings, judgment on the pleadings is the proper and efficient remedy.

ARGUMENT

1. **The Speak Out Act Prohibits Judicial Enforcement of the Non-Disparagement Clause.**

The Speak Out Act (“The Act”) is a federal law aimed at limiting the enforceability of non-disclosure and non-disparagement agreements related to sexual assault and harassment, empowering survivors to speak out about their experiences it was signed into law on December 7, 2022. 42 U.S.C. § 19401 *et seq.* The Amended Complaint establishes every element necessary to render the nondisparagement clause unenforceable under the Speak Out Act as a matter of federal law. The Speak Out Act provides:

*"With respect to a sexual assault dispute or sexual harassment dispute, **no nondisclosure clause or nondisparagement clause agreed to before the dispute arises shall be judicially enforceable** in instances in which conduct is alleged to have violated Federal, Tribal, or State law." 42 U.S.C. § 19403(a). (emphasis added)*

Three elements determine applicability: (1) the clause was agreed to before the dispute arose; (2) the dispute is a sexual assault dispute or sexual harassment dispute; and (3) the conduct at issue is alleged to have violated law. ADW's Amended Complaint establishes all three.

A. The Amended Complaint states the nondisparagement clause was agreed upon before this dispute arose satisfying the first element.

First ADW pleads that the parties entered into the Settlement Agreement resolving prior litigation in the case in *Cockman et al. V. Assignment Desk Works et al 2:19-cv-3082*, and that the nondisparagement clause was a material term of that Agreement. (Am. Compl. ¶¶ 5-6). The

statements giving rise to this lawsuit were made on February 12, 2025, after the Agreement was executed. (Am. Compl. ¶¶ 8) The clause was indisputably agreed to before this dispute arose. The predispute requirement is satisfied.

B. The Amended Complaint establishes that the dispute is a sexual assault dispute.

Secondly, The Act defines a "sexual assault dispute" as "a dispute involving a nonconsensual sexual act or sexual contact, as such terms are defined in section 2246 of title 18, United States Code, or similar applicable Tribal or State law, including when the victim lacks capacity to consent." 42 U.S.C.S. § 19402 (3).(emphasis added) ADW's own Amended Complaint establishes that the statements at issue were about a sexual assault. Paragraph 8 pleads that Berg "told [Gunther] she was sexually assaulted in the presence of Patrick Bryant." (Am. Compl. ¶ 8). ADW is seeking to enforce the non-disparagement clause specifically to suppress those statements. This action is therefore "with respect to a sexual assault dispute" within the meaning of the Act.

C. The conduct alleged in the Amended Complaint violates State law.

Sexual assault is a crime and a violation of South Carolina law. S.C. Code Ann. § 16-3-655 makes sexual assault a felony. S.C. Code Ann. § 16-17-470 criminalizes voyeurism. S.C. Code Ann. § 16-1-40 imposes criminal liability on any person who is accessory during the commission of a felony, meaning Bryant's presence during the assault exposes him to criminal liability. ADW's Amended Complaint pleads that Ms. Berg described being sexually assaulted in the presence of Patrick Bryant, ADW's co-founder and managing member, who she alleges filmed the assault. (Am. Compl. ¶ 8). The conduct alleged is, on its face, conduct alleged to have violated South Carolina law.

ADW's cause of action for breach of contract and its claim for injunctive relief are both predicated entirely on enforcement of the non-disparagement clause. (Am. Compl. ¶¶ 9-16). Where

the clause itself is unenforceable as a matter of federal law, neither cause of action can survive. There is no independent basis for either claim apart from the clause. Judgment on the pleadings is therefore appropriate as to both counts. Because the unenforceability of the clause is established on the face of ADW's own pleadings, no further factual development is required and judgment in favor of Defendant is warranted as a matter of law

I. CONGRESS SPOKE DIRECTLY TO THIS SITUATION: THE SPEAK OUT ACT COMPELS DISMISSAL

ADW's own Amended Complaint establishes every element necessary to render the non-disparagement clause unenforceable under the Speak Out Act as a matter of federal law. Congress enacted the Speak Out Act to protect survivors like Ms. Berg from having predispute nondisparagement clauses weaponized against them when they speak out about sexual assault. As Congress found, "[n]ondisclosure and nondisparagement provisions in agreements between employers and current, former, and prospective employees, and independent contractors, and between providers of goods and services and consumers, can perpetuate illegal conduct by silencing those who are survivors of illegal sexual harassment and assault or illegal retaliation, or have knowledge of such conduct, while shielding perpetrators and enabling them to continue their abuse." 42 U.S.C. § 19401(6). Ms. Berg is a former employee of ADW. The non-disparagement clause ADW seeks to enforce here is precisely the instrument Congress identified as capable of perpetuating abuse silencing a survivor of sexual assault while shielding her perpetrators and enabling them to continue their abuse.

Sexual assault is a violation of South Carolina law. *See*. S.C. Code Ann. § 16-3-655. Bryant's presence during a sexual assault further implicates S.C. Code Ann. § 16-1-40 which is accessory during the commission of felony and S.C. Code Ann. § 16-17-470, which criminalizes voyeurism. ADW's Amended Complaint pleads that Ms. Berg described being sexually assaulted

in the presence of Patrick Bryant, ADW's co-founder and managing member. (Am. Compl. ¶ 8). The conduct alleged is, on its face, conduct alleged to have violated South Carolina law.

ADW's own pleadings establish every element of the Act's prohibition. As Congress further found, "[p]rohibiting nondisclosure and nondisparagement clauses will empower survivors to come forward, hold perpetrators accountable for abuse, improve transparency around illegal conduct, enable the pursuit of justice, and make workplaces safer and more productive for everyone." 42 U.S.C. § 19401(5). This action is precisely what Congress intended to foreclose.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the Court should dismiss the Amended Complaint with prejudice, and the Court should award Ms. Berg reasonable attorneys' fees, court costs, and all expenses incurred in defense of this civil action, and for other such and further relief as the Court deems just and proper.

Respectfully submitted,

s/Marybeth Mullaney

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North Charleston, South Carolina