MARPLE & DAVENPORT

Attorneys at Law

Memorandum

Re: Sara's Syrups

To: Alex Associate

From: Sidney Haley

Our client is the Sara's Syrups Company. Founded 25 years ago, the company manufactures flavored syrups for soda fountains (which are making a come-back in the Southeast and Midwest), snow cones, and similar uses. The syrups are manufactured in Buford, South Carolina, where the current dispute arose.

Attached are a series of documents that will tell you the story. The client wants to know whether it risks liability in this matter.

Memorandum

Re: Sara's Syrups

To: Alex Associate

From: Perry Paralegal

As I follow the documents, Snavely was hired in 1990, and Baskem was hired in 1994. As a result of the World Cup argument, both were discharged. Each has hired Matthews & Boldt to represent them in a state court action.

Rather than give you the entire Sara's Syrups personnel manuals from 1990 and 1994, I have included only the relevant language from those manuals.

Matthews & Boldt is seeking a quick settlement of the case. I have also attached language from a letter from Ms. Matthews relating to the case.

Sara's Syrups

To: Personnel Files

From: Charles Mallory

Date: 4/14/1990

Re: New Employee

On this date, an offer of employment was made to Donald Snavely, who accepted. Snavely will commence his employment as a Technician II, step 1.

Sara's Syrups

To: Personnel Files

From: Charles Mallory

Date: 5/11/1994

Re: New Employee

On this date, Ralph Baskem accepted an offer of employment. Baskem will commence his employment on 5/21. Baskem will be a Quality Control Officer I.

Sara's Syrups

To: Personnel Files

From: Jane Bruse, Second Shift Floor Supervisor

Date: 9/10/2004

Re: Incident Report

I issued a Misconduct Warning A to Donald Snavely as a result of an incident occurring yesterday. During his shift, Snavely engaged in a shouting match with Ralph Baskem. Observers say that the altercation had to do with conduct outside the plant.

Baskem reports, and Snavely does not deny, that the two employees were formerly good friends but are no longer so. Observers of the incident report that Baskem neither instigated the incident nor raised his voice in response to Snavely's shouts.

Snavely used improper language—to wit, "You know-it-all bastard." No physical threats were reported. No warning was issued to Baskem.

Sara's Syrups

To: Personnel Files

From: Jane Bruse, Second Shift Floor Supervisor

Date: 12/05/2004

Re: Warning A Action

I issued a Misconduct Warning A to Donald Snavely as a result of an incident occurring today. During his shift, Snavely accused employee Donna Catz of stealing Snavely's tool kit. He spoke in threatening terms, telling her that if it happened again, "she would get what was coming to her."

I investigated and found that the allegation of a theft was unwarranted. I advised Snavely that such conduct could not be tolerated. He subsequently apologized to Catz.

Sara's Syrups

To: Personnel Files

From: Albert Feller, Director of Personnel

Date: 6/15/2005

Re: Employee Discharge

Today I received an oral report from Jane Bruse, Second Shift Supervisor, regarding an incident involving physical violence in the lunchroom during the second shift. I interviewed Bruse and three employees who observed the incident. The following facts were found.

Donald Snavely and Ralph Baskem were in the lunchroom when Snavely remarked about the failure of the United States team to perform well in the World Cup soccer matches. In particular, he is reported to have said, "Baskem, the world now knows what I have told you all along: the team sucks. Your nephew couldn't play third-string for a team like the French."

Baskem, whose nephew is a starter for the U.S. team, replied, "Don, you are such an ass. I don't know why I didn't see it from the first."

At that point, Snavely took a swing with his fist at Baskem, but failed to connect. Before anyone in the lunchroom could intervene, Baskem shoved the blunt end of a spoon into Snavely's right eye. Snavely collapsed, bleeding, and was taken to the hospital. He is expected to regain most of his sight, if all goes well. Baskem returned to his shift.

Bruse reported the incident to me immediately and recommended that Snavely be terminated. After eliciting the facts stated above, I terminated both Snavely and Baskem. Fighting and serious injury cannot be tolerated at Sara's Syrups.

Sara's Syrups

To: Perry Paralegal

From: Albert Feller, Director of Personnel

Charles Mallory passed away in 1995.

Memorandum

Re: Sara's Syrups

To: Alex Associate

From: Perry Paralegal

A letter from Ms. Matthews reads, in part:

> When my clients are deposed, both will testify that when they were hired, Charles Mallory told them that employees of Sara's Syrups enjoy lifetime, permanent employment, "so long as you don't screw up." Virtually identical language was used, and we believe a court would find that Mallory commonly made such statements to induce people to join the company.

At my request, Ms. Bruse examined the work records of Snavely and Baskem. Both had good records and had earned regular promotions.

Memorandum

Re: Sara's Syrups

To: Sid Haley

From: Alex Associate

I spoke to Lawrence Gleener today about the Snavely/Baskem case. Gleener is CEO of Sara's Syrups and the grandson of the founder. I expressed some concern at supporting the discharges, especially Baskem's, if the courts require us to do so. Gleener acknowledged that Feller may have acted precipitously, but Gleener will not undercut Feller's authority by overruling either discharge.

Sara's Syrups
Personnel Manual (1990)

§ 15.

Sara's Syrups is a family owned and operated company. We want every employee, new and old, to treat Sara's Syrups as part of their family. As a family member, you have obligations to your fellow workers. Work hard, do not misbehave, treat others with respect, and so long as business is prosperous, you have a home here.

Sara's Syrups
Personnel Manual (1994)

§ 15.

Sara's Syrups is a family owned and operated company. We want every employee, new and old, to treat Sara's Syrups as part of their family. As a family member, you have obligations to your fellow workers. Work hard, do not misbehave, treat others with respect, and so long as business is prosperous, you have a home here.

Family members do not resolve their disputes in courts or with lawyers. Nothing in this manual should be taken as guaranteeing you a legal right to a job.

PRESCOTT v. FARMERS TELEPHONE COOPERATIVE, INC.

335 S.C. 330, 516 S.E.2d 923
Supreme Court of South Carolina, 1999

BURNETT, J.

The Court granted a writ of certiorari to review the decision of the Court of Appeals in Prescott v. Farmers Tel. Coop., Inc., 328 S.C. 379, 491 S.E.2d 698 (Ct.App.1997) (Stilwell, J., dissenting). We reverse.

Background

Respondent David M. Prescott (Prescott) brought this wrongful discharge action against his former employer, Petitioner Farmers Telephone Cooperative, Inc. (FTC). Prescott alleged various causes of action, including breach of an employment agreement, breach of the implied duty of good faith and fair dealing, defamation, intentional interference with an economic relationship, and promissory estoppel. He also sought specific performance of the employment contract. The trial court granted FTC summary judgment on all claims except defamation. Prescott appealed.

The Court of Appeals affirmed in part, reversed in part, and remanded. In relevant part, the Court of Appeals held FTC's employment handbook did not alter Prescott's status as an at-will employee and, thereby, FTC could terminate Prescott without cause. The Court of Appeals also held alleged oral assurances by Prescott's supervisors created a jury issue as to whether Prescott had a contract of employment with FTC requiring termination to be for cause. The issue on the writ of certiorari concerns this second ruling.

Facts

In March 1972, Prescott was hired by FTC as a lineman. Over time, he was promoted. In 1992, Prescott was terminated for lying.

Thereafter, Prescott filed this lawsuit. By way of deposition, Prescott testified he received an employee handbook several months after he was hired.[1] He stated it was his understanding from the employee handbook and through discussions with three supervisors that, "[a]s long as you do your job, keep your nose clean, that you'd have a job at Farmers Telephone right on." Prescott testified he interpreted "keeping your nose clean" as "don't go out there and get into trouble and do things you're not supposed to be doing."

At the hearing on FTC's motion for summary judgment, Prescott presented his affidavit to the trial court. In this affidavit, Prescott asserted, at the time he was hired, FTC officials told him he would have a job with FTC "as long as [he did his] job, [kept his] nose clean." He stated he interpreted this to mean "that my employment would continue so long as I performed my employment duties and refrained from engaging in misconduct." Prescott further stated, during the years following his hire, supervisors reiterated the same statement. According to Prescott, FTC issued a new employee manual in 1988. Even after its issuance, Prescott's supervisors told him "as long as you do your job, keep your nose clean, that you' have a job at Farmers Telephone." According to Prescott, he was hired as an employee of definite duration who could only be terminated for cause and, over his twenty-year employment, his status was orally confirmed by supervisors, in spite of any statements to the contrary in employment manuals.

FTC denied these allegations, responding the 1988 employee handbook contained a disclaimer which stated all employees are at-will and may be terminated at any time without notice.

Issue

Did the Court of Appeals err by holding the oral statement by Prescott's supervisors created a jury issue as to whether Prescott's status as an at-will employee was altered?

Discussion

South Carolina has long recognized the doctrine of employment at-will. Pursuant to this doctrine, "a contract for permanent employment, so long as it is satisfactorily performed which is not supported by any consideration other than the obligation or service to be performed on the one

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[1] According to Prescott, the 1972 handbook specifically provided employees could only be terminated for cause. Since this handbook does not appear in the Appendix, the Court will not consider the effect of the document. Rule 209(h), SCACR (appellate court will not consider any fact which does not appear in the [Appendix]); see also Zaman v. South Carolina State Bd. of Medical Examiners, 305 S.C. 281, 408 S.E.2d 213 (1991) (where record provides no factual basis, the Court will not consider the issue).

hand and wages to be paid on the other, is terminable at the pleasure of either party." Shealy v. Fowler, 182 S.C. 81, 87, 188 S.E. 499, 502 (1936). At-will employment is generally terminable by either party at any time, for any reason or for no reason at all. Todd v. South Carolina Farm Bureau Mut. Ins. Co., 276 S.C. 284, 278 S.E.2d 607 (1981), appeal after remand, 283 S.C. 155, 321 S.E.2d 602 (Ct.App.1984), writ granted in part, 285 S.C. 84, 328 S.E.2d 479 quashed, 287 S.C. 190, 336 S.E.2d 472 (1985); Culler v. Blue Ridge Elec. Coop. Inc., 309 S.C. 243, 245, 422 S.E.2d 91, 92 (1992) (doctrine of employment at-will in its pure form allows an employer to discharge an employee for good reason, no reason, or bad reason without incurring liability). The termination of an at-will employee normally does not give rise to a cause of action for breach of contract. Hudson v. Zenith Engraving Co., Inc., 273 S.C. 766, 259 S.E.2d 812 (1979).

Although this Court has recognized exceptions to employment at-will,[3] the doctrine remains in force in South Carolina. We find the policy of employment at-will provides necessary flexibility for the marketplace and is, ultimately, an incentive to economic development. Accordingly, we affirm and adhere to the employment at-will doctrine in South Carolina.

Of course, an employer and employee may choose to contractually alter the general rule of employment at-will and restrict their freedom to discharge without cause or to resign with impunity. See Small v. Springs Industries, Inc., 292 S.C. 481, 357 S.E.2d 452 (1987) (employment at-will limited by employer's issuance of employee handbook setting forth progressive discharge procedures); Weber v. Perry, 201 S.C. 8, 21 S.E.2d 193 (1942) (employee is not at-will where he provides consideration in addition to the provision of services).

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.

In the employment context, we have already recognized that a contract altering the at-will arrangement may arise, in part, from the oral statement of the employer. In King v. PYA/Monarch, Inc., 317 S.C. 385, 453 S.E.2d 885 (1995), we held a written employment agreement which stated employment was at-will was modified by the issuance of a written reprimand and a supervisor's oral statement that two other warnings would be required before the employee could be terminated. Applying this law and general contract principles, we hold the at-will status of an employee may be altered by an oral contract of definite employment.

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)

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[3] See Small v. Springs Industries, Inc., 292 S.C. 481, 357 S.E.2d 452 (1987) (employer may not discharge employee in violation of procedures set forth in employee handbook); Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985) (an at-will employee may not be discharged in violation of a clear mandate of public policy); Moshtaghi v. The Citadel, 314 S.C. 316, 443 S.E.2d 915 (Ct.App.1994) (an at-will employee may not be terminated for exercising constitutional rights).

communication of the offer to the employee, and 3) performance of job duties in reliance on the offer.[5] 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).

Construing all ambiguities, conclusions, and inferences in the evidence in favor of Prescott, we find Prescott failed to establish FTC made an offer to alter his at-will employment status. The alleged offer, "[a]s long as you do your job, keep your nose clean, that you'd have a job at Farmers Telephone right on" is not sufficiently explicit to constitute an offer to limit termination to just cause. We conclude a reasonable person in Prescott's position would construe the statement as praise or encouragement, or even "puffery," rather than as an offer of indefinite employment. Vague assurances of job security, even if repeated, do not give rise to contractual rights. See Broussard v. Caci, Inc.-Fed., 780 F.2d 162 (1st Cir. 1986) (representation "if [employee] did a good job he would have long-term employment" is not express undertaking to guarantee employee could be discharged only for good cause); Eyerman v. Mary Kay Cosmetics, Inc., 967 F.2d 213 (6th Cir. 1992) (discussions concerning nursing homes for retired directors and other retirement benefits and representative's question "if [employees] wanted to receive a Cadillac every two years for the rest of their lives," were insufficient to constitute promise to alter at-will contract); Chastain v. Kelly-Springfield Tire Co., 733 F.2d 1479 (11th Cir. 1984) (statement by employer that "jobs was (sic) secure; that we could continue on like we had been . . . [i]f we did our jobs, kept our noses clean, didn't make waves and not sell to Goodyear and Kelly accounts" was not intent to offer lifetime employment); Rowe v. Montgomery Ward & Co., 437 Mich. 627, 473 N.W.2d 268, 273 (1991) (employee based just cause employment on supervisor's statement as long as you sold, you would have a job at the store; oral statements creating a contract to terminate only for cause "must be based on more than an expression of an optimistic hope of a long relationship"); Lawson v. Boeing Co., 58 Wash.App. 261, 792 P.2d 545 (1990) (repeated oral promises alleging guaranteed position so long as employee's job performance met a certain level was insufficient to create material fact of employment contract).

Since Prescott failed to establish FTC offered him definite employment, he failed to establish the existence of a contract which altered his status as an at-will employee. Accordingly, the Court of Appeals erred in reversing the trial judge's order granting summary judgment to FTC on Prescott's cause of action for breach of an employment agreement. . . .

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[5] A unilateral contract is one "in which there is a promise on one side only; the consideration on the other side being executed." McMahan v. McMahon, 122 S.C. 336, 340, 115 S.E. 293, 294 (1922).

HESSENTHALER v. TRI-COUNTY SISTER HELP, INC

365 S.C. 101, 616 S.E.2d 694
(Supreme Court of South Carolina, 2005)

TOAL, C.J.

Petitioner Emma F. Hessenthaler (Hessenthaler) brought a breach-of-contract action against her former employer, Respondent Tri-County Sister Help, Inc. (the Shelter), alleging she was constructively discharged in violation of a nondiscrimination provision in the Shelter's employee handbook. The jury awarded Hessenthaler $25,000 in damages. The trial court denied the Shelter's motions for a directed verdict and for a judgment notwithstanding the verdict. The court of appeals reversed, finding that the employee handbook did not constitute a contract. We affirm in result.

FACTUAL/PROCEDURAL BACKGROUND

In 1984, Hessenthaler began working as a monitor at the Shelter, a place for women and children who are victims of domestic violence. By late 1995, Hessenthaler had advanced to the position of Shelter Director, a position directly below the Executive Director.

That same year, the Shelter hired a new Executive Director, Audrey Harrell (Harrell), an African-American woman. As soon as Harrell was hired, she began firing members of the staff. At one point, she directed Hessenthaler, who is a white woman, to fire certain employees, also white women. Harrell hired two black women and one white woman to replace the fired employees.

According to Hessenthaler, her disputes with Harrell continued and escalated. One day, Hessenthaler told one of the new employees, a black woman, to operate the Shelter hotline. The employee began to scream at Hessenthaler, and another new employee, also a black woman, joined in. Hessenthaler reported the incident to Harrell and planned to file a grievance. But Hessenthaler testified that she was not permitted to file a grievance, and the next day, was told that she would no longer be supervising the two women.

Hessenthaler also testified that on January 1, 1996, someone called her at home to report that the Shelter's twenty-four-hour hotline was not being answered. Hessenthaler called Harrell to report the problem. Harrell demanded that Hessenthaler reveal the name of the person who informed her about the hotline. Hessenthaler refused to answer the question, said she had to go, and hung up the phone. Later, Hessenthaler called a board member to report the hotline situation and the conversation with Harrell.

The next day, Harrell met with Hessenthaler after work for three hours and forty-five minutes. Hessenthaler testified that Harrell told her that she was going to be punished; that she was going to be demoted from Shelter Director; that her office would become a bedroom; that Harrell would "destroy her"; and that hanging up the phone on her was "just like calling [Harrell] the 'n' word." Harrell suspended Hessenthaler for two days for insubordination, failure to assist the Executive Director in an investigation, and failure to follow the proper chain of command. Harrell told Hessenthaler that a board member would contact Hessenthaler to inform her whether or not she could return to work.

While on suspension, Hessenthaler experienced some health problems, including depression. She also had a hysterectomy, and later broke some ribs in a car accident. She periodically sent doctors' notes to the Shelter in support of her leave-of-absence from January to mid-April. The

Shelter accepted the notes and did not terminate Hessenthaler.

In February 1996, while Hessenthaler was on leave, Harrell sent Hessenthaler a new employee handbook. Hessenthaler testified that she never read the handbook because she was sick at the time. After some communication by mail, however, Hessenthaler and Harrell finally met at the Shelter on May 8. During the meeting, Harrell proceeded to read the employee manual aloud to Hessenthaler. Hessenthaler admitted that the handbook was read to her "cover to cover, page by page, word for word."

The manual contained a disclaimer in bold, all-capitalized letters, on the first page, which provided as follows:

> **THE LANGUAGE USED IN THESE PERSONNEL POLICIES IS NOT INTENDED TO CREATE, NOR SHOULD IT BE INTERPRETED TO CREATE A LEGAL CONTRACT OR AGREEMENT BETWEEN [THE SHELTER] AND ANY OR ALL OF ITS EMPLOYEES. THIS DISCLAIMER TAKES PRECEDENCE OVER ANY STATEMENT IN THESE POLICIES.**

Hessenthaler testified that she did not recall Harrell reading the disclaimer language.

The handbook also contained a nondiscrimination provision, which provided:

> [The Shelter] is an equal opportunity employer. All decisions, including hiring, training, and promotion, are made without regard to race, color, religion, national orbigin, sex, age, handicap, sexual preference, or any other protected status.

After the handbook was read aloud, Hessenthaler was offered the position as Shelter Manager, which included eleven more requirements than the job offered earlier. Hessenthaler testified that she was told that she needed to get a college degree, and that she would also have to assume the responsibilities of volunteer coordinator. Hessenthaler testified she felt as though it would take eight people to do all of that work.

Hessenthaler left the meeting, telling Harrell that, due to all of the job requirements, she would have to think about whether she would accept the position. Hessenthaler did not return to work by May 13 (her deadline for responding to Harrell's latest job offer) and later discovered that she had been fired.

Hessenthaler brought a breach-of-contract action against the Shelter alleging she was constructively discharged in violation of the nondiscrimination provision in the Shelter's employee handbook. The jury awarded her $25,000 in damages. The Shelter's motions for a directed verdict and for judgment notwithstanding the verdict were denied. The court of appeals reversed, holding that the employee handbook did not constitute a contract, and therefore the trial court erred in denying the Shelter's motions

After granting certiorari, we reversed, holding that the question of whether the handbook created an enforceable contract was properly submitted to the jury. . . .

We now consider the following issue for review:

Did the court of appeals err in holding that the employee handbook did not constitute a con-

tract? . . .

Discussion

Hessenthaler contends that the court of appeals erred in holding that the employee handbook did not constitute a contract. We disagree.

In general, an at-will employee may be terminated at any time for any reason or for no reason, with or without cause. *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). This Court has held that a disclaimer appearing in bold, capitalized letters, in a prominent position, is conspicuous.[5] *Marr v. City of Columbia,* 307 S.C. 545, 547, 416 S.E.2d 615, 616 (1992); *cf. Johnson v. First Carolina Fin. Corp.,* 305 S.C. 556, 409 S.E.2d 804 (Ct.App.1991) (finding disclaimer appearing in all-capitalized letters, in a prominent position, conspicuous).

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).

Mandatory, progressive discipline procedures may constitute enforceable promises. *See, e.g., Conner,* 348 S.C. at 464, 560 S.E.2d at 611 (holding that a handbook containing both disclaimers and a mandatory discipline procedure created a jury issue); *Leahy v. Starflo Corp.,* 314 S.C. 546, 548-49, 431 S.E.2d 567, 568 (1993) (holding that an employer was contractually bound by the mandatory disciplinary procedure). Such procedures typically provide that an employee may be fired only after certain steps are taken. When definite and mandatory, these procedures impose a

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[5] [5] The General Assembly recently passed legislation requiring disclaimers to be in underlined, capitalized letters, appearing on the first page of the handbook, and signed by the employee. S.C.Code Ann. § 41-1-110 (Supp.2004). [The statute reads, "It is the public policy of this State that a handbook, personnel manual, policy, procedure, or other document issued by an employer or its agent after June 30, 2004, shall not create an express or implied contract of employment if it is conspicuously disclaimed. For purposes of this section, a disclaimer in a handbook or personnel manual must be in underlined capital letters on the first page of the document and signed by the employee. For all other documents referenced in this section, the disclaimer must be in underlined capital letters on the first page of the document. Whether or not a disclaimer is conspicuous is a question of law." – Perry.]

limitation on the employer's right to terminate an employee at any time, for any reason.

In the present case, the employee handbook has a disclaimer on the front page, in bold, capitalized letters. Because the disclaimer appears on the front page of the handbook, in bold, capitalized letters, we hold that the disclaimer is conspicuous as a matter of law. *Marr,* 307 S.C. at 547, 416 S.E.2d at 616; *Johnson,* 305 S.C. at 560, 409 S.E.2d at 806.

Finding the disclaimer to be conspicuous as a matter of law, we next turn to the question of whether the handbook contains a promise. Hessenthaler contends that the nondiscrimination provision constituted a promise, and that she was fired in violation of that promise. The provision provides:

> [The Shelter] is an equal opportunity employer. All decisions, including hiring, training, and promotion, are made without regard to race, color, religion, national origin, sex, age, handicap, sexual preference, or any other protected status.

We hold that this provision does not constitute a promise altering the at-will employment relationship and giving rise to a breach-of-contract claim. *See McKenzie v. Lunds, Inc.,* 63 F.Supp.2d 986, 1003 (D.Minn.1999) (holding that nondiscrimination policy statements in employee handbook are legally insufficient to sustain a breach-of-contract claim; such policies are too indefinite to form a contract between employer and employee); *Cherella v. Phoenix Technologies Ltd.,* 32 Mass.App.Ct. 919, 586 N.E.2d 29, 31 (1992) (holding that an equal opportunity policy announced in an employee handbook did not establish contractual rights supporting a breach-of-contract claim). Unlike a mandatory, progressive discipline procedure, a general policy statement of nondiscrimination does not create an expectation that employment is guaranteed for any specific duration or that a particular process must be followed before an employee may be fired.

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 (Ct.App.1994) (finding that a sexual harassment policy contained a promise to "promptly and carefully" investigate complaints of sexual harassment). The nondiscrimination provision in this case was not specific and did not make any promises regarding disciplinary procedure or termination decisions. Therefore, we hold that the handbook did not contain promises enforceable in contract.

Accordingly, we conclude that the evidence in this case leads to only one inference: the handbook does not constitute a contract. Therefore, the issue of whether the handbook constituted a contract should not have been submitted to the jury. *See Small,* 292 S.C. at 483, 357 S.E.2d at 454 (holding that the issue of whether a contract exists should be submitted to the jury when the existence of the contract is in question and the evidence is either conflicting or admits of more than one inference).

CONCLUSION

Because the Shelter's handbook contained a conspicuous disclaimer, of which Hessenthaler had actual notice, and because the handbook did not contain any promissory language altering the employment at-will relationship, we hold that the handbook did not constitute a contract. Therefore, the Shelter's post-trial motions should have been granted.

Charles Pharol, Contract Law Basics

Margee Pub. Company

A bilateral contract is a promise for a promise. A unilateral contract is a promise for a performance.