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## CIVIL CONSPIRACY IN THE EMPLOYMENT AT-WILL CONTEXT: WHERE DOES SOUTH CAROLINA STAND AFTER *ANGUS V. BURROUGHS & CHAPIN CO.*?

### I. INTRODUCTION

Civil conspiracy has existed in the South Carolina legal system for nearly a century.<sup>1</sup> The premise for the action is the idea that a combination of two or more persons in an action poses a greater risk of harm than does an individual in the same action.<sup>2</sup> Over the years, the South Carolina courts have considered, applied, analyzed, and clarified the tort of civil conspiracy, for which the South Carolina Court of Appeals recently provided the following simple definition in *Angus v. Burroughs & Chapin Co.*<sup>3</sup> “[a] civil conspiracy exists when there is (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes the plaintiff special damage.”<sup>4</sup> The *Angus* decision, however, has potentially broadened the scope of civil conspiracy beyond its original intent and application, especially in the employment at-will context.

This Note highlights some of the potential ramifications of the recent court of appeals decision through an analysis of the required elements of civil conspiracy. Part II of this Note details the development of civil conspiracy in South Carolina. Part III describes the facts and procedural history of *Angus*. Part IV analyzes the effect of the *Angus* decision by examining each element of civil conspiracy. Finally, Part V applies the holding of *Angus* to a prior case in an effort to show the effect of the new ruling.

### II. BACKGROUND OF CIVIL CONSPIRACY

In 1939, the seminal case of *Charles v. Texas Co.*<sup>5</sup> defined civil conspiracy as “the conspiring together to do an unlawful act to the detriment of another or the doing of a lawful act in an unlawful way to the detriment of another.”<sup>6</sup> Since that time, courts have refined the definition to include three elements: “(1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3)

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1. See *Rhodes v. Granby Cotton Mills*, 87 S.C. 18, 41, 68 S.E. 824, 833 (1910) (affirming an action for conspiracy where the defendant maintained a list of mill workers who participated in strikes and kept the list not merely for its own benefit but also to share with other mills, and where doing so prevented the plaintiff from obtaining work at such other mills).

2. F.P. HUBBARD & R.L. FELIX, *THE SOUTH CAROLINA LAW OF TORTS* 386 (2d ed. 1997).

3. 358 S.C. 498, 596 S.E.2d 67 (Ct. App. 2004). As of April 11, 2005, this case is pending certiorari from the South Carolina Supreme Court.

4. *Id.* at 502, 596 S.E.2d at 69 (citations omitted).

5. 192 S.C. 82, 5 S.E.2d 464 (1939).

6. *Id.* at 101, 5 S.E.2d at 472. A conspiracy to do an unlawful act to the detriment of another may, for example, be found when one knowingly issues an incorrect tax opinion in connection with an investment scheme known to be an abusive tax shelter. See *Allen v. Columbia Fin. Mgmt., Ltd.*, 297 S.C. 481, 377 S.E.2d 352 (Ct. App. 1988). A lawful act performed in an unlawful manner was found when employers black-listed an employee so that he could not obtain work from other employers who were part of the conspiracy. *Rhodes*, 87 S.C. at 40, 68 S.E. at 832.

which causes him special damage.”<sup>7</sup> The tort relies on the overt act and its resulting damages rather than the agreement or combination per se.<sup>8</sup> Unlike criminal conspiracy, civil conspiracy only becomes actionable once “overt acts occur which proximately cause damage to the party bringing the action.”<sup>9</sup> Thus, no cause of action exists for an unexecuted civil conspiracy.<sup>10</sup>

South Carolina no longer requires proof of unlawful means or independently unlawful acts in order to establish a civil conspiracy.<sup>11</sup> A cause of action may arise from an act two or more people committed even where no cause of action would arise if an individual committed the same act.<sup>12</sup> Thus, “[u]nder South Carolina law, lawful acts may become actionable as a civil conspiracy when the object is to ruin or damage the business of another.”<sup>13</sup> However, the party bringing the claim still must prove that even if the action itself was lawful, its purpose was to injure.<sup>14</sup> For example, in *Bivens v. Watkins*,<sup>15</sup> the plaintiff shareholder sued the other shareholders for damages she suffered from losing her investment in a failed moving and storage business.<sup>16</sup> The court of appeals noted that, while the plaintiff presented evidence of damages resulting from the failed business, she did not prove that “the purpose of the business of the parties was anything other than profit motivated, and not meant to deprive [Mrs. Bivens] of her property.”<sup>17</sup> Many times, the true motives of alleged conspirators may be mixed, and fact finders likely will have difficulty determining whether actions actually are improper.<sup>18</sup>

Under the third element of civil conspiracy, the plaintiff must plead “special damages,” or damages distinct from those the plaintiff sought in other causes of action.<sup>19</sup> Although civil conspiracy may stand on its own, a plaintiff may not collect damages for both civil conspiracy and a separate tort, with both allegations

7. *Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 10, 344 S.E.2d 379, 382 (Ct. App. 1986) (citations omitted).

8. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 292, 278 S.E.2d 607, 611 (1981).

9. *Id.*

10. *Charles v. Texas Co.*, 199 S.C. 156, 177, 18 S.E.2d 719, 727 (1942) [hereinafter *Charles II*].

11. *Lee*, 289 S.C. at 11, 344 S.E.2d at 382.

12. *See Charles II*, 199 S.C. at 170, 18 S.E.2d at 724 (“[W]here an act done by an individual, though harmful to another, is not actionable because justified by his rights, yet the same act becomes actionable when committed in pursuance of a combination of persons actuated by malicious motives and not having the same justification as the individual.”) (citations omitted); *Howle v. Mountain Ice Co.*, 167 S.C. 41, 58, 165 S.E. 724, 729 (1932) (per curiam) (rejecting the rule that “two or more [persons] may lawfully do, under agreement and regardless of purpose or motive, whatever one may lawfully do singly”).

13. *Gynecology Clinic, Inc. v. Cloer*, 334 S.C. 555, 556, 514 S.E.2d 592, 592 (1999) (per curiam) (internal quotations omitted) (quoting *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 70, 370 S.E.2d 711, 713 (1988)). In *Cloer*, the court found a civil conspiracy when picketers of an abortion clinic substantially affected the business of the clinic. Although the First Amendment protected the picketing, the court upheld the civil conspiracy claim because the evidence showed a goal of discouraging women from patronizing the business and the picketers’ own literature claimed the actions had successfully damaged the business of the abortion clinic. *Id.* at 556–57, 514 S.E.2d at 592–93.

14. *Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 13–14, 344 S.E.2d 379, 383 (Ct. App. 1986).

15. 313 S.C. 228, 437 S.E.2d 132 (Ct. App. 1993).

16. *Id.* at 231, 437 S.E.2d at 134.

17. *Id.* at 235, 437 S.E.2d at 136 (alteration in original).

18. HUBBARD & FELIX, *supra* note 2, at 386.

19. *Vaught v. Waites*, 300 S.C. 201, 209, 387 S.E.2d 91, 95 (Ct. App. 1989).

predicated on the same wrongful acts.<sup>20</sup> In *Todd v. South Carolina Farm Bureau Mutual Insurance Co.*, the plaintiff sued after being fired from his job and sought damages for tortious interference with contractual relations, extreme and outrageous conduct, bad faith termination of the employment contract, invasion of privacy, and civil conspiracy.<sup>21</sup> The South Carolina Supreme Court struck down the civil conspiracy claim, because Todd based his claim on the same acts that he alleged in the first four causes of action. Thus, he was “precluded from seeking damages for the same acts yet again.”<sup>22</sup> Successfully proving that special damages resulted from a conspiracy, however, makes each conspirator jointly and severally liable for “all damages naturally resulting from any wrongful act of a co-conspirator in exercising the joint enterprise.”<sup>23</sup> Courts do not require a precise measurement of the damages for recovery so long as calculation of the damages using a reasonable basis of computation is possible.<sup>24</sup> Generally, South Carolina courts also will allow punitive damages if the defendant intentionally or maliciously carries out the conspiracy.<sup>25</sup>

South Carolina courts have broadened the field of admissible evidence to prove conspiracy. In *Island Car Wash, Inc. v. Norris*,<sup>26</sup> the court of appeals clearly summarized the approach to proof and allowed circumstantial evidence to provide the basis for the claim due to the “covert and clandestine” nature of a conspiracy.<sup>27</sup> In order to establish conspiracy, a party must produce evidence “from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise.”<sup>28</sup>

Alleging a civil conspiracy also may have jurisdictional implications. Out-of-state defendants may find themselves subject to personal jurisdiction under a long-arm statute based on a co-conspirator’s activities within the forum state.<sup>29</sup> Upon

20. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981) (quoting 15A C.J.S. *Conspiracy* § 33 (1981)). The quoted C.J.S. material is now at 15A C.J.S. *Conspiracy* § 44 (2002).

21. *Id.* at 287, 278 S.E.2d at 608.

22. *Id.* at 293, 278 S.E.2d at 611; *see also Vaught*, 300 S.C. at 209, 387 S.E.2d at 95 (granting no recovery for a conspiracy cause of action, because the plaintiff alleged no special damages distinct from breach of contract damages).

23. *Charles II*, 199 S.C. 156, 174, 18 S.E.2d 719, 726 (1942).

24. *Id.*

25. *Rhodes v. Granby Cotton Mills*, 87 S.C. 18, 41–42, 68 S.E. 824, 833 (1910) (explaining that defendant’s preparation of a list of strikers, including the plaintiff, to black-list and sharing the list with other employers provided enough evidence of malice to allow for punitive damages where employer was aware that plaintiff was not a striker).

26. 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987).

27. *Id.* at 601, 358 S.E.2d at 153.

28. *Id.*

29. *Hammond v. Butler, Means, Evins & Brown*, 300 S.C. 458, 463, 388 S.E.2d 796, 798 (1990); *Allen v. Columbia Fin. Mgmt., Ltd.*, 297 S.C. 481, 489, 377 S.E.2d 352, 357 (Ct. App. 1988). S.C. CODE ANN. § 36-2-803 (West 2003) states:

(1) A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person’s

....

(c) commission of a tortious act in whole or in part in this State;

....

(2) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him . . . .

satisfaction of the long-arm statute, the court must then conduct due process analysis of each defendant's own contacts with the state; the court may not attribute the contacts of one alleged conspirator to another alleged conspirator.<sup>30</sup>

In the employment context in South Carolina law, civil conspiracy dates back at least to 1910.<sup>31</sup> Several rules limiting the liability of employers have emerged. A corporation cannot legally conspire with itself, because the law considers a corporation as an individual legal entity.<sup>32</sup> Agents of a corporation, however, may conspire among themselves, as individuals, or with third parties.<sup>33</sup> For example, a conspiracy may arise between a hospital administrator and other medical staff in revoking a physician's privileges, but no such conspiracy may occur between the administrator and the hospital itself.<sup>34</sup> Additionally, an employee may not successfully recover damages under civil conspiracy allegations for termination of employment when the employment contract was terminable at the will of either party.<sup>35</sup> *Angus v. Burroughs & Chapin Co.*<sup>36</sup> involves such a conspiracy action arising out of the employment-at-will context.

### III. *ANGUS V. BURROUGHS & CHAPIN CO.*

Linda Angus served as Horry County Administrator from June 3, 1996 until June 22, 1999, at which time the county council fired her.<sup>37</sup> After her termination, Angus sued the county council members individually, the Myrtle Beach Herald and some of its employees, and the developer Burroughs & Chapin Co. and some of its employees.<sup>38</sup> The allegations included tortious interference with contractual relations, defamation, civil conspiracy, and unfair trade practices, all arising from the termination of her employment by Horry County.<sup>39</sup> Specifically, Angus alleged that the parties "'conspired with numerous persons . . . to see that Angus was terminated from her employment as Horry County Administrator.'"<sup>40</sup> The allegations also described the intent of the defendants' actions as an effort "to gain financial advantage and to avoid regulatory requirements."<sup>41</sup>

The Horry County Circuit Court dismissed the causes of action for intentional interference with contractual relations, defamation, and unfair trade practices, and subsequently granted summary judgment to all defendants as to the civil conspiracy claims.<sup>42</sup> On appeal to the South Carolina Court of Appeals, Angus argued that the trial court erred in granting the motion for summary judgment on the civil conspiracy claim. The court of appeals agreed with Angus and overturned the trial

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30. *Hammond*, 300 S.C. at 463, 388 S.E.2d at 798–99; *Allen*, 297 S.C. at 489–90, 377 S.E.2d at 357.

31. *See supra* note 1 and accompanying text.

32. *Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct. App. 1986).

33. *Id.* at 14, 344 S.E.2d at 383.

34. *Id.* at 13–14, 344 S.E.2d at 383.

35. *Ross v. Life Ins. Co. of Va.*, 273 S.C. 764, 765, 259 S.E.2d 814, 815 (1979).

36. 358 S.C. 498, 596 S.E.2d 67 (Ct. App. 2004).

37. *Id.* at 501, 596 S.E.2d at 69.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 501, 596 S.E.2d 67, 69 (Ct. App. 2004).

court's order for all defendants except the council members.<sup>43</sup> Thus, the court of appeals established that a civil conspiracy claim against a third party may stand independently of other causes of action, even when all alleged damages stem from termination of an at-will employment contract, and even when the employer may not be held liable.

#### IV. ANALYSIS AND APPLICATION OF *ANGUS V. BURROUGHS & CHAPIN CO.*

Because civil conspiracy serves to provide compensation for injuries attributable only to the conspiracy and not for injuries arising primarily from other causes of action,<sup>44</sup> courts should not extend the reach of the tort to allow for recovery when damages are only "special" because the court dismissed the underlying torts upon which the conspiracy is based. Through *Angus*, the court of appeals broadened the application of the tort past its intended purpose, especially in the employment at-will context. An analysis of *Angus*, applying the elements of civil conspiracy, shows that the court of appeals misapplied the law, failed to address specific requirements of the law, and effectively broadened the scope of the law past its intended purpose.

##### A. *A Combination of Two or More Persons*

As previously stated, a court may not find an employer liable for civil conspiracy upon termination of an at-will employment relationship.<sup>45</sup> The court of appeals properly applied this standard in affirming summary judgment for the council members. Though not applicable to *Angus* specifically, an interesting dilemma arises from this rule. An at-will employer may not legally conspire to terminate an at-will employee, but a third party implicated in such an alleged conspiracy receives no such immunity. Suppose the only other defendant to this case had been Burroughs & Chapin Co. Because the council cannot legally contribute to a conspiracy to terminate Angus, Burroughs & Chapin Co. becomes a single conspirator. Civil conspiracy requires "a combination of two or more persons."<sup>46</sup> Therefore, in the context of at-will employment, a civil conspiracy claim against the employer and a single third party should not stand against either party. The *Angus* court does not address the ramifications of extending the doctrine. Instead, the rule likely now extends liability to any third party for civil conspiracy in the employment at-will context.

In its analysis of the employment at-will argument, the court of appeals discussed similar situations from Georgia and North Carolina.<sup>47</sup> The court of appeals relied on the Georgia Court of Appeals in *Studdard v. Evans*,<sup>48</sup> which stated, "[T]he fact that employment is at the will of the employer, [does] not give immunity to a third person who, without justification interferes with the relation between the parties to the contract."<sup>49</sup> Under Georgia law, "[a] conspiracy upon

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43. *Id.* at 509, 596 S.E.2d at 73.

44. *See supra* notes 19–22 and accompanying text.

45. *See supra* note 35 and accompanying text.

46. *Angus*, 358 S.C. at 502, 596 S.E.2d at 69.

47. *Id.* at 505, 596 S.E.2d at 71.

48. 135 S.E.2d 60 (Ga. Ct. App. 1964).

49. *Id.* at 64 (citations omitted).

which a civil action for damages may be founded is a combination between two or more persons either to do some act which is a tort, or else to do some lawful act by methods which constitute a tort.”<sup>50</sup> In *Studdard*, the Georgia court allowed the conspiracy charge to overcome a demurrer, because the gist of the conspiracy was to “interfere with the right of enjoyment of property,” which is an actionable tort in itself.<sup>51</sup> Therefore, the court found sufficient facts to show that the third party interfered with contractual relations between the parties. In *Angus*, however, the trial court had already dismissed the charge of tortious interference with contractual relations.<sup>52</sup> The court of appeals failed to address the point that Georgia law requires an underlying tort for a civil conspiracy action to succeed. Under Georgia law, the conspiracy claim in *Angus* would fail, because the trial court already dismissed all the underlying torts for the conspiracy.

The court of appeals used the North Carolina opinion of *Smith v. Ford Motor Co.*<sup>53</sup> to define an “outsider.” According to the North Carolina court, an “outsider” is “one who was not a party to the terminated contract and who has no legitimate business interest of his own in the subject matter thereof.”<sup>54</sup> Although the South Carolina Court of Appeals did not discuss the distinction in *Angus*, the North Carolina court went on to define a “non-outsider” as “one who, though not a party to the terminated contract, had a legitimate business interest of his own in the subject matter.”<sup>55</sup> Even more pertinent to *Angus*, the North Carolina court accepted the rule in *Kelly v. International Harvester Co.*<sup>56</sup> sustaining “the right of . . . a non-outsider to insist upon the discharge of an employee whose continued employment jeopardized its legitimate business interest in the subject matter of the terminated contract.”<sup>57</sup> Following these complete definitions, defendants *Myrtle Beach Herald* and *Burroughs & Chapin Co.* have legitimate business interests in *Angus*’ employment contract. As a civil servant, *Angus* was responsible to the citizens of Horry County, thus giving the newspaper a legitimate business interest in her employment. Additionally, *Angus*’ duties included regulating public funds used for construction costs. She and *Burroughs & Chapin Co.* previously disagreed over the allocation of funds for development projects.<sup>58</sup> Because *Burroughs & Chapin Co.*’s development projects depended, at least in part, on *Angus*’ approval of county funds, the developer’s business interests tied directly into *Angus*’ employment contract. *Angus* claimed that *Burroughs & Chapin Co.* conspired for her termination in order “to gain financial advantage and to avoid regulatory

50. *Savannah Coll. of Art & Design, Inc. v. Sch. of Visual Arts of Savannah, Inc.*, 464 S.E.2d 895, 896 (Ga. Ct. App. 1995) (alteration in original) (internal quotations omitted) (citations omitted).

51. *Studdard*, 135 S.E.2d at 65.

52. *Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 501, 596 S.E.2d 67, 69 (Ct. App. 2004).

53. 221 S.E.2d 282 (N.C. 1976). As part of the erosion of the employment-at-will doctrine in North Carolina, statutory law has superseded *Smith*. *Burgess v. Your House of Raleigh, Inc.*, 388 S.E.2d 134, 137 (N.C. 1990).

54. *Smith*, 221 S.E.2d at 292.

55. *Id.*

56. 179 S.E.2d 396 (N.C. 1971).

57. *Smith*, 221 S.E.2d at 292.

58. Tim Bullard, *Horry Fires Administrator*, POST AND COURIER (Charleston, S.C.), May 26, 1999, at A1 (“The administrator got in a dispute recently with *Burroughs & Chapin*, the Grand Strand’s most prominent development company, over state reimbursement for some infrastructure improvements on a project called Grande Dunes. The county held up the state money with questions about whether county procurement policies had been followed properly.”).

requirements.”<sup>59</sup> Therefore, the court of appeals misapplied the North Carolina definitions by considering *Burroughs & Chapin Co.* an outsider rather than a non-outsider. As a non-outsider to *Angus’* employment contract, *Burroughs & Chapin Co.* would not be liable for civil conspiracy for requesting her termination under North Carolina law.<sup>60</sup> By using the North Carolina court’s terminology, the court of appeals opened the possibility for a defendant to show non-outsider status as a defense to a civil conspiracy claim when no such defense previously existed in South Carolina.

The court of appeals, in using *Studdard* and *Smith*, further contaminated its analysis of the civil conspiracy claim with claims for tortious interference with contractual relations. As discussed above, Georgia requires an underlying tort for a successful conspiracy claim. In using the statement, “the fact that employment is at the will of the employer, [does] not give immunity to a third person who, without justification interferes with the relation between the parties to the contract,”<sup>61</sup> the Georgia court was evaluating whether the claim for tortious interference with contractual relations applied, not whether the conspiracy claim was valid. Instead, the Georgia court applied the conspiracy standard *after* finding tortious interference with the right to enjoyment of property, and after specifically finding that a combination of two or more persons conspired to commit the tort.<sup>62</sup>

Additionally, the South Carolina Court of Appeals’ use of the example in *Smith*<sup>63</sup> confused the analysis of tortious interference with contractual relations with that of conspiracy. The North Carolina court, by way of example, discussed whether *Ford Motor Company*, as a single entity, justifiably terminated the contract with the plaintiff, not whether *Ford* had conspired with other parties to procure the termination.<sup>64</sup> In relying on the example, the South Carolina Court of Appeals used a justification based on tortious interference with contractual relations to support its denial of the summary judgment motion for the civil conspiracy claim. However, the court had already dismissed the claim for tortious interference with contractual relations, which therefore was no longer a valid consideration.<sup>65</sup>

59. *Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 501, 596 S.E.2d 67, 69 (Ct. App. 2004).

60. The holding in *Smith* stated:

To exert economic pressure upon an employer for the purpose of procuring the termination by him of his employment of another is a qualified privilege even though, as between the actor and the employer, the actor has an absolute right to do that which produces such pressure upon the employer. The actor is liable in damages to the employee for so procuring such termination of the employment if the actor so acted with malice and for a reason not reasonably related to the protection of a legitimate business interest of the actor.

*Smith v. Ford Motor Co.*, 221 S.E.2d 282, 296 (N.C. 1976).

61. *Studdard v. Evans*, 135 S.E.2d 60, 64 (Ga. Ct. App. 1964).

62. *Id.* at 64–65.

63. The opinion stated:

The question presented to us by this appeal is: If A, knowing B is employed by C under a contract terminable at will by C, maliciously causes C to discharge B, which C would not otherwise have done . . . can B maintain in the courts of this State an action against A for damages? Our conclusion is that he can.

*Angus*, 358 S.C. at 505, 596 S.E.2d at 71 (quoting *Smith*, 221 S.E.2d at 290).

64. *Smith*, 221 S.E.2d at 290.

65. *Angus*, 358 S.C. at 501, 596 S.E.2d at 69.



### B. *For the Purpose of Injuring the Plaintiff*

Because many civil conspiracy cases involve a mixture of motivations on the part of alleged conspirators, courts generally allow relaxed evidentiary standards for plaintiffs to prove the element of intent.<sup>66</sup> The *Angus* court, however, failed to address the element of intent for the civil conspiracy claim. In fact, the court of appeals raised, but failed to answer, the key question for the outcome of this case: “If the remaining respondents *maliciously* caused Horry County to discharge Angus, assuming that Angus was able to continue performing her job well—then the answer is yes, Angus can bring an action against them.”<sup>67</sup> By failing to address the issue of intent, and specifically the “malicious” standard the court created in the opinion, the court of appeals provided no guidance on the proper standard for a malicious inducement of termination or on whether any of the facts presented, viewed in the light most favorable to Angus, supported the standard. Angus’ claim stated “that the respondents ‘conspired with numerous persons . . . to see that Angus was terminated from her employment as Horry County Administrator.’ And she alleged that the respondents did this to gain financial advantage and to avoid regulatory requirements.”<sup>68</sup> Under this language, the actual motivation of Burroughs & Chapin Co. in pursuing Angus’ termination appeared to be gaining economic advantage and removing obstacles to county development contracts. Therefore, the court easily could have characterized Burroughs & Chapin Co.’s motivation for seeking Angus’ termination not as injuring the plaintiff, but actually self-enrichment. While both intentions may coexist, South Carolina law requires the plaintiff to plead intent to injure as an element of civil conspiracy, and Angus failed to do so.<sup>69</sup>

The test in South Carolina, on this point, is “whether the primary purpose or object of the combination is to injure the plaintiff.”<sup>70</sup> In the employment at-will context, a civil conspiracy claim typically involves termination of employment.<sup>71</sup> Because damages naturally flow from termination of employment, the question of intent may or may not be important. After the *Angus* decision, the question remains, “Did the defendants intend to induce Angus’ termination?” A more difficult question to answer is, “Did the defendants intend to harm Angus by inducing her termination, or did they intend to achieve financial gain and preserve their own legitimate business interests by which Angus’ termination served as a means to an end?” The court of appeals made no determination generally on the

66. See HUBBARD & FELIX, *supra* note 2, at 386.

67. *Angus*, 358 S.C. at 505–06, 596 S.E.2d at 71 (emphasis added).

68. *Id.* at 501, 596 S.E.2d at 69.

69. *Id.*

70. *Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct. App. 1986); see also *Bivens v. Watkins*, 313 S.C. 228, 235, 437 S.E.2d 132, 136 (Ct. App. 1993) (looking to whether “the purpose of the business of the parties was anything other than profit motivated . . .”).

71. See generally *Lawson v. S.C. Dep’t of Corr.*, 340 S.C. 346, 352, 532 S.E.2d 259, 261–62 (2000) (“Allegations based solely upon two supervisors discussing whether to terminate an at-will employee would not support a conspiracy cause of action.”); *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981) (requiring special damages to be plead for recovery under a claim of civil conspiracy); *Vaught v. Waites*, 300 S.C. 201, 209, 387 S.E.2d 91, 95 (Ct. App. 1989) (*per curiam*) (requiring that the plaintiff plead special damages for recovery under a claim of civil conspiracy); *Lee*, 289 S.C. at 13, 344 S.E.2d at 383 (“[T]he essential consideration is . . . whether the primary purpose or object of the combination is to injure the plaintiff.”).

intent of the parties, or specifically on whether they “maliciously” induced Angus’ termination. The court also failed to apply the North Carolina outsider versus non-outsider exception for third parties inducing termination of an employment contract. Still further, the court did not explain the standard for malicious inducement of termination. If Burroughs & Chapin Co. merely brought to the attention of the county council information concerning Angus, which the council previously did not have and which would lead to termination of the employee, would the court consider such revelation a malicious inducement? Presumably, the county council would act on its own accord in scoring the evaluation and would take into account information from its own investigation as well as any other available information. The court of appeals failed to address any facts showing that the defendants provided information to the council regarding Angus’ employment or any showing of malicious inducement of termination by the defendants.<sup>72</sup> Such a showing is critical to the outcome of the case.

South Carolina should adopt a standard requiring proof of intent to injure for a civil conspiracy claim in the employment at-will context. The courts already recognize a well-established rule for intentional interference with contractual relations.<sup>73</sup> Simply allowing a plaintiff to show an intent to induce termination without looking to the actor’s motivations provides an easier avenue to recovery than under intentional interference with contractual relations, and the plaintiff may not recover under both torts damages that are not “special” to the conspiracy.

In the employment at-will context, the court should undergo a strict analysis of intent. Because one of the alleged conspirators will be the employer who cannot be liable for civil conspiracy, terminated employees will have an easier time succeeding against third parties under civil conspiracy than under other causes of action. *Angus* provides a perfect illustration of this conclusion. The trial court dismissed Angus’ claim of tortious interference with contractual relations and unfair trade practices, but the court of appeals allowed her civil conspiracy claim to proceed based on the same set of allegedly wrongful acts.<sup>74</sup> If the court found no evidence of intentional interference with contractual relations, how could it find that a conspiracy to interfere with contractual relations may have occurred? Thus, civil conspiracy, in certain contexts, serves as an easier outlet to recovery where the underlying torts may fail.

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72. The only possible indication that the defendants maliciously induced Angus’ discharge was that, “Angus had been employed for about three years at the time and had received excellent evaluations.” *Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 506 n.5, 596 S.E.2d 67, 71 n.5 (Ct. App. 2004). The council, however, justified her termination on a failed evaluation score of 2.79 out of 5.0. Bullard, *supra* note 58, at A1.

73. *DeBerry v. McCain*, 275 S.C. 569, 574, 274 S.E.2d 293, 296 (1981) (stating that the plaintiff in an action for intentional interference with contractual relations must show “(1) the contract; (2) the wrongdoer’s knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) damages resulting therefrom.”).

74. *Angus*, 358 S.C. at 508–09, 596 S.E.2d at 73.

### C. Which Causes the Plaintiff Special Damages

To fulfill the third element of civil conspiracy, the plaintiff must plead “special damages,” or damages beyond those the plaintiff alleged in other causes of action.<sup>75</sup> Following the precedent that *Todd* established, the court of appeals should have affirmed the motion for summary judgment on this element alone. The *Angus* court, however, failed to analyze the special damages element and, thus, left open to speculation whether *Todd* remains good law. *Todd* requires a plaintiff to plead damages from “wrongful acts . . . [apart from] those for which damages have already been sought.”<sup>76</sup> Neither *Todd* nor any subsequent case holds that a plaintiff may recover under civil conspiracy when such plaintiff could not recover for a separate tort based on damages naturally flowing from the same set of wrongful acts. In *Angus*, the court of appeals correctly noted that all four of the plaintiff’s claims “[arose] from the termination of her employment by Horry County.”<sup>77</sup> More precisely, as found in the *Todd* opinion, “the [fourth] cause of action does no more than incorporate the prior allegations and then allege the existence of a civil conspiracy and pray for damages resulting from the conspiracy. No additional acts in furtherance of the conspiracy are plead.”<sup>78</sup> Thus, the test requires the plaintiff to plead additional facts. Although the trial court dismissed *Angus*’ first three causes of action, the court of appeals should not have ignored the requirement for special damages in civil conspiracy. Based on this potential ramification, defense lawyers should take care to attack civil conspiracy claims before addressing any other claims. Had Burroughs & Chapin Co. sought summary judgment on the civil conspiracy claim prior to dismissing the other causes of action, the court could not have ignored the *Todd* rule for special damages. Instead, the *Angus* decision leaves plaintiffs wondering whether they still have to plead special damages for a civil conspiracy claim.

### V. HOW THE *ANGUS* DECISION MAY HAVE AFFECTED PREVIOUS DECISIONS

Putting the ruling in perspective, previously decided cases may have come out differently under the expanded applicability of civil conspiracy in *Angus*. For example, consider the case of *Waldrep Bros. Beauty Supply, Inc. v. Wynn Beauty Supply Co.*<sup>79</sup> In *Waldrep*, a beauty supply company’s suit against a competitor alleged that the competitor conspired with the producer of the beauty supplies to terminate the plaintiff’s at-will contract.<sup>80</sup> The Fourth Circuit Court of Appeals, applying South Carolina law, declined to allow a successful civil conspiracy claim based on fair market competition even though the facts pleaded implied animosity between the parties.<sup>81</sup> The court reasoned, “[t]he only harm that Wynn intended to cause Waldrep was the incidental harm to competitors that is necessarily part of all

75. *Vaught v. Waites*, 300 S.C. 201, 209, 387 S.E.2d 91, 95 (Ct. App. 1989) (per curiam).

76. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981).

77. *Angus*, 358 S.C. at 501, 596 S.E.2d at 69.

78. *Todd*, 276 S.C. at 293, 278 S.E.2d at 611.

79. 992 F.2d 59 (4th Cir. 1993).

80. *Id.* at 60.

81. *Id.* at 61 (noting that buyout negotiations between competitors broke down prior to the termination of the contract).

legitimate business competition.”<sup>82</sup> While *Angus* involved public officials rather than competing businesses, this distinction is unimportant in the context of a civil conspiracy claim. Burroughs & Chapin Co. had a legitimate business interest in the public official who regulated county funds. In the public arena, lobbying serves as a form of competition for business interests. An important fact common to both *Angus* and *Waldrep* is that, in each case, contract termination was due to unsatisfactory performance.<sup>83</sup> Applying the reasoning of the *Angus* court to the *Waldrep* case would necessarily result in an opposite outcome. Wynn’s attempts to buy out Waldrep and meeting with the producers of the beauty supplies displayed an intent to take business from Waldrep. As a result of the failed negotiations and the termination of Waldrep’s contract, Wynn received a windfall. Therefore, Waldrep suffered damages that Wynn must have intended. Similarly, Burroughs & Chapin Co. likely intended termination of Angus’ contract as a means of procuring more governmental contracts. Under the broad reasoning of *Angus*, the *Waldrep* court would have concluded that Wynn conspired with the beauty supply producers to take over Waldrep’s business and thus cause damages to Waldrep.

## VI. CONCLUSION

In conclusion, the court of appeals significantly broadened the scope of each element of civil conspiracy, resulting in a tort that now may extend further than originally intended, especially in the employment at-will context. Future courts should reexamine the court of appeals’ expanded application of civil conspiracy and bring the law back in line with the precedents of *Todd*, *Charles*, and *Lee*. The tort should continue to punish wrongdoing as a century of case law established for a combination of persons intent on injuring the business of another and causing special damages, but the tort should not extend to punish legitimate business actions when the plaintiff pleaded no intent to injure and no special damages exist other than those arising from other causes of action.

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82. *Id.* at 63.

83. *Id.* at 61 (noting a projected shortfall of \$225,000 in sales); Bullard, *supra* note 58, at A1 (stating that the county considered Angus’ score of 2.79 out of 5.0 on her performance a failing score resulting in the termination of her employment).

