IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOHN P. GALLAGHER, Plaintiff, v. E.I. DUPONT DE NEMOURS AND COMPANY, Defendant.	)	C.A. No. 06C-12-188 WCC

Submitted: December 23, 2009
Decided: April 30, 2010

On Defendant's Motion for Summary Judgment
GRANTED IN PART - DENIED IN PART

OPINION

Gary A. Bryde, Esquire; Charles Gruver, III, Esquire; 724 Yorklyn Road, Suite 100, Hockessin, DE 19707. Attorneys for Plaintiff.

Kathleen Furey McDonough, Esquire; Sarah E. DiLuzio, Esquire; Potter Anderson & Corroon LLP, 1313 North Market Street, P.O. Box 951, Wilmington, DE 19899-0951. Attorneys for Defendant.

CARPENTER, J.

Before the Court is Defendant E.I. DuPont de Nemours and Co. ("DuPont" or "Defendant") Motion for Summary Judgment. Plaintiff John P. Gallagher ("Gallagher" or "Plaintiff") has filed a complaint alleging (1) breach of contract; (2) promissory estoppel; (3) breach of covenant of good faith and fair dealing; (4) innocent or negligent misrepresentation; (5) breach of the Delaware Wage Payment Act; and (6) breach of the Pennsylvania Wage Payment and Collection Law. For the reasons set forth below, this Court hereby grants in part and denies in part Defendant's Motion for Summary Judgment.

Facts

Plaintiff John P. Gallagher started his employment with DuPont as a chemist in January of 1970 and retired from the company 35 years later in December of 2005. During the time critical to this litigation, Plaintiff worked at the DuPont Marshall Laboratory in Philadelphia as Project Leader on the Data Base Improvement Project ("Project"). The Project began in approximately 2002 under Plaintiff's leadership and continued until the time he retired at the end of 2005. The Project was a data base improvement project mapping colors for use in formulating paint for the automobile refinish industry.

In the spring of 2004, DuPont initiated a Career Transition Program ("CTP") with the goal of reducing its overall workforce. This downsizing program provided

that any employee participating in the CTP would receive one month's salary for every two years of DuPont employment, up to a maximum of 12 months. Based on his years of service, had Plaintiff been selected for the 2004 CTP, he would have received one year's salary or $148,632.00. Under the terms of the CTP, the DuPont management had the sole discretion to choose which employees would be eligible and to decline the CTP for any individual employee based upon the business needs of the company.

During the CTP, it is undisputed that the Plaintiff volunteered for participation in the program, and on April 19, 2004, submitted an expression of interest document to the company. The Plaintiff was subsequently advised by his supervisor, Stacey Balderson ("Balderson"), that because the Project for which he had vital responsibility was determined to be business critical, the company had decided not to offer CTP to him. Ms. Balderson further explained that the Project was important to the performance coating business of the company and Plaintiff was critical to ensure the project's success within the established time frame.

Disappointed by the fact that he was not selected, the Plaintiff wrote an e-mail to Edward J. Donnelly, Jr. ("Donnelly") who was the Vice President of the Performance Coatings Business at DuPont.[1] In this correspondence, the Plaintiff

[1] Pl.'s Answer. Br. in Opp'n of Def.'s Mot. For Summ. J. App. D0115.

explained that he had volunteered for CTP with the expectation that he would be given the option of participating in the early retirement program but could remain on to complete the project. This expectation was based upon his understanding that similar requests had been honored by the company at their Marshall Lab during a similar reduction in 2000. He advised Mr. Donnelly that if such arrangements were not available, he would have to consider retiring before the Project was completed. Mr. Donnelly subsequently spoke to the Plaintiff and again emphasized his critical role in the project and encouraged him to speak with Martin Breucker ("Breucker") who was the Director at the Marshall Lab and directly expressed these concerns to him. Mr. Breucker was ultimately responsible for the decisions as to who would be offered CTP at the Marshall Lab.

Sometime in the summer of 2004, the Plaintiff and Mr. Breucker met to discuss the Plaintiff's disappointment over not being selected for CTP and the Plaintiff advised Mr. Breucker that he was considering retiring. Plaintiff expressed that the money that he would have received under CTP was significant to him and his family and would have meant a lot to them in his retirement. Mr. Breucker again emphasized to the Plaintiff that he was a valued employee of DuPont leading a business critical project and that the company needed him to remain in his role as Project Leader until it was completed. Mr. Breucker admits that during this conversation he told the

Plaintiff that he would "take care" of the Plaintiff if he remained on and did not retire.

Up to this point, the facts of the case are not in dispute nor is there any disagreement that as a result of the representation made by Mr. Breucker to the Plaintiff, he agreed to stay and complete the Project. The dispute that has now led to this litigation relates to the parties understanding and intentions as to what was promised to the Plaintiff by Mr. Breucker.

The Plaintiff's version of events would reflect that Mr. Breucker indicated he did not know how they would do it, but they would find a way to get the Plaintiff "significant" compensation if he remained with the company. While the Plaintiff admits he was told that amount would not be exactly the same as the CTP to the "penny," it would be significant. Mr. Breucker's recollection of the representations made at the meeting is that he was not sure how he would get it done but that he would try to ensure the Plaintiff was awarded for his willingness to stay and complete the Project. While he agrees that his goal at the meeting was to make sure the Plaintiff continued with the Project, he denies any representations were made that the monetary benefit would closely equate to what the Plaintiff expected if he had been offered CTP.

Regardless of the exact nature of the representations made at this meeting, there is no dispute that those representations between Mr. Breucker and the Plaintiff

convinced the Plaintiff to remain and complete the Project. Unfortunately, there is no written agreement and no documentation of what occurred at the meeting. Neither the Plaintiff nor Mr. Breucker followed up the conversation with a confirming e-mail or letter, so the Court is left with the diverse recollections of the representations that occurred.

The Project was nearing completion in the latter part of 2005 and in August of that year Mr. Breucker recommended that the Plaintiff and his project team receive an award of $40,000 for the excellent job they had done on the Project. Mr. Breucker's memo to Ed Donnelly states "This is the program that we asked [Plaintiff] to stay to lead when he volunteered for last year's CTP." Mr. Donnelly subsequently approved the award, and the Plaintiff individually received $30,000 for his work in leading the Project. After learning of the award, Plaintiff contacted Mr. Breucker to ask whether additional money was forthcoming. He was told that the $30,000 award was the only additional monies he would be receiving, and the Plaintiff again expressed his disappointment as he had expected the compensation to be closer to what his CTP benefit would have been. Believing that there had been an agreement for additional compensation, the Plaintiff subsequently filed this lawsuit.

Standard of Review

When considering a motion for summary judgment the Court must determine whether there is a genuine issue as to any material fact.[2] It is the burden of the moving party to demonstrate that the legal claims are supported by undisputed facts.[3] If the moving party properly supports his claims, the burden then shifts to the nonmoving party to demonstrate that there are issues of material fact to be resolved by a fact-finder.[4] The Court must view the evidence in a light most favorable to the nonmoving party.[5] However, when the facts permit a reasonable person to draw only one inference, the question becomes one for decision as a matter of law.[6]

Discussion

1. Breach of Contract

Plaintiff first alleges that DuPont breached an oral contractual agreement when they failed to compensate Plaintiff under the terms set forth in the May 2004 meeting with Mr. Breucker.[7] Plaintiff seeks specific performance for the sum of $148,632.00, the amount Plaintiff would have received under CTP.[8] In support of its motion,

[2] Super. Ct. Civ. R. 56(c).
[3] *HCR-ManorCare v. Fugee*, 2010 WL 780020, at *3 (Del. Super. Jan. 26, 2010).
[4] *Fugee*, 2010 WL 780020, at *3.
[5] *Id.*
[6] *Id.*
[7] Pl.'s Am. Compl. ¶ 34.
[8] Pl.'s Am. Compl. ¶ 32.

DuPont contends that there is insufficient evidence to support the existence of a valid enforceable contract.

In order to allow for specific performance of a contract, the existence and terms of the contract sought to be enforced must be established by clear and convincing evidence.[9] It is well settled Delaware law that three elements are necessary to prove the existence of an enforceable contract: (1) intent of the parties to be bound, (2) sufficiently definite terms, and (3) consideration.[10] Additionally, an enforceable contract must contain all material terms[11] of the agreement and material provisions that are indefinite will not be enforced[12]. Where the terms in an agreement are so vague that a court cannot determine the existence of a breach, then the parties have not reached a meeting of the minds, and a court should deny the existence of a contract.[13]

In analyzing this issue, a couple of clear conclusions can be easily formed. First, the Court believes there was an agreement made during the May, 2004 meeting between the Plaintiff and Mr. Breucker. Plaintiff agreed to delay his retirement and

---

[9] *In Matter of Beaty*, 1996 WL 560183, at *7 (Del. Ch. Sept. 30, 1996) (quoting *M.F. v. F.*, 172 A.2d 274, 276 (Del. Ch. 1961)).
[10] *Carlson v. Hallinan*, 925 A.2d 506, 524 (Del. Ch. 2006).
[11] *Ramone v. Lang*, 2006 WL 905347, at *11 (Del. Ch. Apr. 3, 2006).
[12] *Hindes v. Wilmington Poetry Soc'y*, 138 A.2d 501, 503 (citing *Most Worshipful, etc. v. Hiram Grand Lodge*, 80 A.2d 294 (Del. Ch. 1951)).
[13] *Continental Ins. Co. v. Rutledge & Co., Inc.*, 750 A.2d 1219, 1230 (citing *Haft v. Dart Group Corp.*, 877 F. Supp. 896, 906 (D. Del. 1995)); *see also Ramone*, 2006 WL 905347, at *11 (citing RESTATEMENT (SECOND) OF CONTRACTS § 33(3) (1981) (stating when terms are left open or uncertain, this tends to demonstrate that an offer and acceptance did not occur)).

complete the Project and in return Mr. Breucker agreed that some additional monetary benefit would be given to the Plaintiff. As such, even if the Court was to turn and view the facts in the light most favorable to DuPont,[14] there was consideration, an agreement and an intent by both parties that they would be bound to the agreement. Unfortunately, the analysis begins to break down when one reviews whether the terms of the agreement are sufficiently defined to be enforceable.

During the May 2004 meeting, Plaintiff alleges that he communicated to Mr. Breucker his disappointment for not being chosen to participate in CTP and further stated that the amount under CTP was "significant" to him and his family.[15] Plaintiff claims that Mr. Breucker responded by stating that he would find a way to get Plaintiff "significant compensation" if Plaintiff remained with DuPont.[16] Furthermore, Mr. Breucker indicated that "the amount will not be exactly the same as the CTP to the penny but it would be a significant amount."[17] Plaintiff argues that Mr. Breucker's use of the term "significant" during these discussions about the Plaintiff's disappointment in not being allowed to participate in CTP provides a context which would establish that the parties understood the additional monetary

[14] The Court appreciates that the standard of review requires it to view the evidence in the light most favorable to the Plaintiff. However, on this point even if it was to accept DuPont's position, an agreement was still reached under the facts here.
[15] Pl.'s Answer. Br. in Opp'n of Def.'s Mot. for Summ. J. at II.
[16] Gallagher Aff. 13.
[17] *Id.* at 14.

benefit would be close in line with the Plaintiff's CTP award if he had been allowed to participate. However, even when the Court views the facts in a light most favorable to the Plaintiff, it cannot find that the compensation terms of this agreement were clearly defined. Although Plaintiff may have equated Mr. Breucker's use of the word "significant" and his comment that he would "take care of him" to the amount of the CTP, that belief is not supported by any other evidence uncovered during discovery and is open to a wide spectrum of interpretation and speculation. The Plaintiff admits that there was never a specific discussion as to what monetary benefit would be given if he stayed and it would be improper for the Court to allow one to be imposed now. Because of the difficulty of verifying oral promises, it is critical that oral statements be clear and unequivocal, and a simple promise that one would be "taken care of" does not meet that standard.[18]

While there are disputed expectations here, there are no disputed facts. There was never a clear and unequivocal understanding by the parties as to the monetary benefit the Plaintiff would receive under the agreement. As such, the Court believes it would be inappropriate in a breach of contract context to allow a jury to speculate or guess what would be the appropriate compensation amount. In simple terms, that

[18] *See Wilson v. Wells Aluminum Corp.*, 1997 WL 52921, at *2 (6th Cir. Feb. 7, 1997); *In re Estate of Rocamonte*, 787 A.2d 198, 202 (N.J. Super. Ct. App. Div. 2001); *Lawson & Frank, P.C. v. Bettius*, 2004 WL 3466347, at *5-6 (Va. Cir. Ct. Oct. 7, 2004).

contractual requirement cannot be established by the Plaintiff as the terms are not sufficiently defined, and thus the Defendant's Motion as to the breach of contract claim is required to be granted.

2. Promissory Estoppel

In the alternative, Plaintiff also seeks to find relief on the basis of a quasi-contract theory of promissory estoppel. Plaintiff alleges that DuPont, through its employees, "promised Plaintiff that if he agreed to continue in his employment with Defendant, he would receive additional compensation in an amount that would approximate what he would have received had he been allowed to participate in CTP."[19] The Plaintiff's argument closely mirrors that of the breach of contract claim in that it alleges "a promise was made by Mr. Breucker to 'take care of' Mr. Gallagher by obtaining for him 'significant' compensation."[20]

Promissory estoppel is found when there is proof of (1) a promise, (2) with the intent to induce action or forbearance based on the promise, (3) reliance, and (4) injury.[21] Such promise or promises must be sufficiently definite and not vague.[22] Distinguishing a promise from a non-promise must be done through a reasonable

[19] Pl.'s Am. Compl. ¶ 46.
[20] Pl.'s Answer. Br. in Opp'n of Def.'s Mot. for Summ. J. at III.
[21] *Id.*
[22] *Chaplake Hldg., Ltd v. Chrysler Corp.*, 1999 WL 743577, at *1 (Del. Super. June 16, 1999) (citing to *Rabkin v. Philip A. Hunt Chemical Corp.*, 480 A.2d 655, 661 (Del. Ch. 1984)).

interpretation of the parties' expressions in light of the surrounding circumstances.[23] The party asserting promissory estoppel has the burden of proving it by clear and convincing evidence.[24]

Unfortunately, based on similar conclusions drawn under the breach of contract claim, the Court cannot reasonably find, even when it views the evidence in the light most favorable to the Plaintiff, that he can establish clear and convincing evidence that a definitive promise was made to Plaintiff for the CTP amount of $148,632.00. When deciding whether a promise was made, courts have turned to such factors as what the defendant said, in what manner defendant said it and how many times such assurances were made.[25] Here, there were at least two statements made by Mr. Breucker to Plaintiff that characterize the alleged promise. Mr. Breucker stated "the amount will not be exactly the same as the CTP to the penny"[26] and when Plaintiff asked Breucker to clarify "significant" compensation, Breucker responded that it wouldn't be the amount that is in the CTP.[27] Both of these statements would indicate to a reasonable person that the Plaintiff would not be receiving an amount that was equivalent to the CTP benefit.

---

[23] *See* CORBIN ON CONTRACTS § 8.9 (1996).
[24] *Konitzer v. Carpenter*, 1993 WL 562194, at *7 (Del. Super. Dec. 29, 1993).
[25] *Konitzer*, 1993 WL 562194, at *7.
[26] Gallagher Dep. 44, Nov. 25, 2008.
[27] *Id.* at 63.

At best, Breucker's statements suggests a promise to provide *some* compensation to Plaintiff for his delayed retirement; but those same statements do not suggest that there was a promise to provide a specific amount of compensation. Even the Plaintiff must agree there was no promise for the amount of $148,632.00. As such, the Court finds that the Plaintiff would be unable to provide clear and convincing evidence that the promise made by the Defendant would be to compensate the CTP amount in exchange for delaying his retirement. The promise the Defendant is attempting to establish, even in a quasi contractual context, is simply too vague to enforce.

3. Good Faith & Fair Dealing

Plaintiff also alleges that DuPont breached its obligation to act in good faith and deal fairly with Plaintiff when DuPont failed to compensate Plaintiff in accordance with the monetary value Plaintiff would have received under CTP. To find a breach of implied covenant of good faith and fair dealing, the party allegedly breaching the contract must have acted in an "arbitrary or unreasonable" manner and in "bad faith."[28] Under Delaware law, a finding that a party acted in "bad faith" requires a showing of wrongful intent.[29]

[28] *Wood v. Baum*, 953 A.2d 136, 143 (Del. 2009).
[29] *Wood*, 953 A.2d at 143.

While the Court believes there is an issue regarding the viability of this claim once the Court finds that no contract existed, it need not address that issue since the facts do not indicate that DuPont or its employees acted in bad faith. While there may be a significant misunderstanding here between the parties, this is a dispute over the amount of agreed compensation and not one where one party is denying any obligation at all. Here there was a financial award made but not to the amount the Plaintiff believed he was entitled to receive. While the Plaintiff's expectations may not have been met, to argue bad faith here is an unreasonable stretch of the facts. As such, the Court will grant summary judgment as to this issue.

4. Innocent or Negligent Misrepresentation

Next, Plaintiff claims innocent or negligent misrepresentation because Mr. Breucker "knew or should have known that his representations that he would 'take care of' Gallagher with the clear implication that future additional compensation would be equivalent to the CTP benefits were false and would induce Gallagher to continue to work and complete the Project."[30]

As a threshold matter, the Plaintiff must demonstrate the following elements to find innocent or negligent misrepresentation: (1) pecuniary duty to provide accurate info, (2) the existence of a "material misrepresentation", (3) failure to

[30] Pl.'s Am. Compl. ¶ 48.

exercise reasonable care in obtaining or communicating the information, and (4) pecuniary loss caused by reliance.[31] Plaintiffs must prove that there was an actual material misrepresentation, not one that "may" have occurred.[32]

Plaintiff's claim focuses on Defendant's pecuniary duty to provide accurate information and the failure to exercise reasonable care in obtaining or communicating that information. Plaintiff asserts that if Mr. Breucker had no intention of obtaining for the Plaintiff significant compensation, then his statement that he would "take care" of him and by providing "significant" compensation was false."[33] Alternatively, the Plaintiff claims that even if Mr. Breucker did intend on fulfilling the promise, he failed to exercise reasonable care in determining whether he would actually be able to live up to that promise within the internal controls of DuPont.[34]

The Defendant responds that there has been no misrepresentation because Mr. Breucker promised to obtain a "significant" monetary benefit for the Plaintiff, and that he in fact kept that promise by nominating him for the achievement award. The Defendant has gone to great lengths to attempt to convince the Court of how the award of $30,000 to a single employee was extraordinary and unusual, and as such, not only significant, but fair within the DuPont corporate structure. Ms. Balderson

[31] *Lundeen v. Pricewaterhousecoopers, LLC*, 2006 WL 2559855, at *6 (Del. Super. Aug. 31, 2006).
[32] *Id.*
[33] Pl.'s Answer. Br. in Opp'n of Def.'s Mot. for Summ. J. at V.
[34] *Id.*

stated in her deposition that she "had never seen an amount that high"[35] and the largest award Mr. Breucker had "ever seen before was like, $5,000."[36] In the Defendant's brief they even reference one of their interrogatory responses where they indicated that "no other employee within DuPont's Performance Coating business received an award of $20,000 or more in the preceding ten years."[37] In the memo from Mr. Breucker to Mr. Donnelly requesting that the Plaintiff be considered for the achievement award, he acknowledged that the request "is an unusually high amount."[38]

Accepting these statements as true and considering them in the context of the conversation between Mr. Breucker and the Plaintiff that clearly was focused on his disappointment over the CTP decision and not being eligible to receive the $148,632.00, there is a fair inference that the jury could make that the representations made by Mr. Breucker were either false and intended to simply mislead the Plaintiff into not retiring and completing the Project or more likely, negligent in that he knew or should have known that the benefit sought by the Plaintiff was simply impossible to achieve within the corporate structure of DuPont. In other words, if to Mr. Breucker's knowledge the highest award ever given was $5,000.00 and the Plaintiff

[35] Balderson Dep. 36, May 8, 2009.
[36] Breucker Dep. 33, Aug. 13, 2009.
[37] D.I. 29.
[38] Pl.'s Answer. Br. in Opp'n of Def.'s Mot. for Summ. J. App. D0057.

is able to establish during the trial that the evidence would suggest that the monetary benefit that was being discussed between him and Mr. Breucker reasonably related to the CTP benefit, it is a fair argument that Mr. Breucker knew or should have known he could never come close to the dollars being discussed, and he misled the Plaintiff into believing otherwise. Under these circumstances, the Court simply cannot grant summary judgment as to this count. There are clearly issues of disputed facts and in particular questions as to the credibility of the individuals who participated in these discussions that must allow this count to proceed to the jury.[39]

5. Delaware Wage Payment and Collection Act

Next, the Plaintiff alleges that Defendant breached the Delaware Wage Payment and Collection Act, 19 *Del. C.* §1101 when failing to pay Plaintiff an additional $148,632.00 at the time of Plaintiff's retirement.[40] Plaintiff defines this amount as a "bonus" owed to Plaintiff by Defendant and argues that "bonus" is included in the definition of "wages" under 19 *Del. C.* §1101(a)(5).[41]

Although the Act does not clearly define "wages," this Court has previously reviewed Chapter 11, Title 19, Delaware Code and found that the statutory construction concludes that the "word usage in the statute indicates that the word

[39] There is also a factual dispute regarding whether the Plaintiff has suffered a loss by this conduct and there is simply not sufficient information provided to allow the Court to decide otherwise. As such, whether the Plaintiff can establish a loss will be determined during the trial.
[40] Pl.'s Am. Compl. ¶ 54.
[41] Pl.'s Answer. Br. in Opp'n of Def.'s Mot. for Summ. J. at VI.

'wages' was used to refer to the regular direct compensation which would ordinarily be paid at the end of each period of a certain number of work days. The usage in the statute does not adapt itself to the concept that "wages" include nonrecurrent benefits."[42] Thus, the purpose of the Delaware Wage Payment and Collection Act is to provide a remedy for employees to recover regular direct recurrent wages unreasonably withheld by the employer.[43]

In our case here, the amount disputed is not directly part of the regular recurrent compensation for services rendered by the Plaintiff. Plaintiff's claim centers around an amount he believes he is entitled to beyond what Plaintiff was already paid for his services rendered to DuPont. While circumstances surrounding this compensation are difficult to precisely characterize, it is clear to this Court they are not "wages" as intended by this statute.

The Court finds that 19 *Del. C.* §1101 does not provide relief for such additional payments that are not part of the regular recurrent compensation for services rendered by the employee. This section would only be applicable if Defendant failed to pay Plaintiff his regular recurrent salary as indicated in his

[42] *Dep't. of Labor v. Green Giant Co.*, 394 A.2d 753, 755 (Del. 1978); *see also Compass v. American Mirrex Corp.*, 72 F. Supp. 2d 462, 468-69 (D. Del. Oct. 27, 1999); *Local 435 v. General Motors Corp.*, 1985 WL 552265, at *4-5 (Del. Super. Aug. 8, 1985).
[43] *Green Giant Co.*, 394 A.2d at 755.

employment contract. That is not the case here, and as such, the Court must grant summary judgment as to this claim.

6. Pennsylvania Wage Payment and Collection Act

Lastly, Plaintiff alleges that Defendant breached the Pennsylvania Wage Payment and Collection Law (WPCL) 43 P.S. §260.1 when Defendant failed to pay Plaintiff $148,632.00.[44] It is well settled Pennsylvania law that the WPCL does not create a right to compensation, but rather provides a statutory remedy when employer breaches contractual obligation to pay earned wages; the contract between parties governs in determining whether specific wages are earned.[45] Stated another way, the purpose of the WPCL is to allow employees to recover wages and other benefits that are due from employers pursuant to agreements between the parties.[46]

Therefore in order to bring a claim for relief under the WPCL, a contractual agreement must be found between the parties for the amount in dispute. Beyond Gallagher's original employment agreement with DuPont, no separate contractual agreement existed between Gallagher and DuPont for the amount of $148,632.00. Because there is no contractual agreement for the amount in dispute, the Court must grant summary judgment as to Plaintiff's WPCL claim.

---

[44] Pl.'s Am. Compl. ¶ 60.
[45] *See De Asencio v. Tyson Foods, Inc.*, 342 F.3d 301 (3d Cir. 2003); *Harding v. Duquesne Light Co.*, 882 F. Supp. 422 (W. D. Pa. 1995).
[46] *Killian v. McCulloch*, 850 F. Supp. 1239, 1255 (E.D. Pa. 1994) (citing *Tener v.Hoag*, 697 F. Supp. 196, 197 (W. D. Pa. 1988)).

Conclusion

For the reasons set forth above, this Court hereby grants in part and denies in part Defendant's Motion for Summary Judgment.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.