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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No.: 2022-000907

Shaileshkumar Patel..... Appellant,

v.

Florence Investment, LLC d/b/a Microtel Inn & Suites  
and John Doe ..... Respondent.

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**INITIAL BRIEF OF RESPONDENT FLORENCE INVESTMENT, LLC  
D/B/A MICROTTEL INN & SUITES**

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## STATEMENT OF THE CASE

On October 23, 2017, Plaintiff/Appellant Shaileshkumar Patel (“Patel”) sustained injuries after being assaulted in the parking lot of a hotel operated by Defendant/Respondent Florence Investment, LLC d/b/a Microtel Inn & Suites (“Microtel Inn”). Patel, an employee of Microtel Inn, first brought a claim against Microtel Inn under the South Carolina Workers’ Compensation Act. Microtel Inn initially denied liability under the Act. Prior to a hearing on the merits, Patel voluntarily settled his claim against Microtel Inn for the sum of \$300,000 and executed an Agreement and Final Release on March 21, 2019. Over a year later, Patel filed a Summons and Complaint with the Court of Common Pleas for the 12th Judicial Circuit in Florence County, South Carolina on October 23, 2020. Patel alleges his injuries were caused by the negligence of Microtel Inn in failing to provide adequate security at the hotel and to maintain the premises in a proper condition. Microtel Inn timely answered the Complaint, denying the allegations of negligence and raising the affirmative defense that Patel’s tort action was barred under the exclusivity provision of the South Carolina Workers’ Compensation Act.

On January 20, 2022, Microtel Inn moved for summary judgment on the grounds that Patel’s tort claims are barred by the exclusivity provision of the South Carolina Workers’ Compensation Act. The motion was heard on May 11, 2022, and by Order dated May 27, 2022, the circuit court granted Microtel Inn’s motion. The circuit court held that Patel’s act of settling his workers’ compensation claim and accepting the benefits afforded by the Act extinguished his common law remedies against his employer. The Circuit Court further held that the Agreement and Final Release was a

full and final clincher that extinguished any civil claims on Patel's behalf, despite Microtel Inn's denial of liability in the Release. This appeal followed.

### **STATEMENT OF THE FACTS**

This case arises out of an assault that occurred on October 23, 2017, in the parking lot of a hotel operated by Microtel Inn on premises located at 1912 Enterprise Drive in Florence, South Carolina. At the time, Patel was employed by Microtel Inn and lived with his family in the hotel. On the night of the assault, Patel and his daughter had gone to Walmart to shop. Upon returning to the hotel parking lot, Patel pulled his vehicle into the parking lot. He was followed into the parking lot by another vehicle. Patel stopped his vehicle and put his emergency light on, signaling the other driver to pass him. The other driver did not pass him. Instead, the other driver followed Patel around the parking lot two more times before exiting his vehicle, approaching Patel's vehicle and shooting into the vehicle, striking Patel and severely injuring him. The identity of the assailant was never discovered.

Prior to commencing the instant civil action, Patel brought a workers' compensation claim against Microtel Inn. In support of his claim, Patel asserted his injury occurred while in the course and scope of his employment. Specifically, Patel testified his job at the hotel was "to do the front desk and whatever -- 24/7, whatever was needed to be done." See Workers' Compensation Dep. of Plaintiff Shaileshkumar Patel at p. 21:19-24.<sup>1</sup> Patel testified he was on call 24 hours a day, seven days a week. See id. Patel testified Microtel Inn's owner and managing agent, Raj Patel, would sometimes send him off the hotel property to buy food for the hotel's breakfast area.

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<sup>1</sup> Exhibit A of Defendant's Memorandum in Support of Motion for Summary Judgment.

See id. at p. 30:11-22. Microtel Inn denied liability under the Workers' Compensation Act, asserting Patel's injuries did not occur while in the course and scope of his employment. In support of its denial, Raj Patel testified Patel was not required to live in the hotel, was not "on call" 24/7, and that his job duties were limited to working the front desk as a clerk and did not include shopping for supplies for the hotel. See Workers' Compensation Dep. of Raj Patel at p. 48:13-22; 53:4-17; 55:10-25; 56:1-10.<sup>2</sup>

Prior to a hearing on the merits of the workers' compensation claim, the parties chose to settle the disputed claim for the sum of \$300,000, and Patel executed a Workers' Compensation Agreement and Final Release<sup>3</sup>. Patel subsequently filed the instant civil action on October 23, 2020. At his deposition in the civil action, Patel testified that at the time of the assault, he and his daughter were returning from Walmart where he had purchased groceries for both themselves and for the hotel breakfast. See Civil Action Dep. Of Plaintiff Shaileshkumar Patel at p. 23:4-8.<sup>4</sup>

### **STANDARD OF REVIEW**

While the "proper procedure for raising lack of subject matter jurisdiction prior to trial is to file a motion to dismiss," "[i]f a party files a Rule 56 motion for summary judgment on the ground of lack of subject matter jurisdiction, the trial court should treat the motion as if it were a Rule 12(b)(1) motion to dismiss." Edens v. Bellini, 359 S.C. 433, 440-41, 597 S.E.2d 863, 867 (Ct. App. 2004) (internal citations omitted); Posey v. Proper Mold & Eng'g, Inc., 378 S.C. 210, 217, 661 S.E.2d 395, 399 (Ct. App. 2008) (same); Dickert v. Metro. Life Ins. Co., 311 S.C. 218, 219-20, 428 S.E.2d 700, 701

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<sup>2</sup> Exhibit A of Plaintiff's Reply to Defendant's Memorandum in Support of Motion for Summary Judgment.

<sup>3</sup> Exhibit C of Defendant's Memorandum in Support of Motion for Summary Judgment.

<sup>4</sup> Exhibit B of Defendant's Memorandum in Support of Motion for Summary Judgment.

(1993), as modified on reh'g (Apr. 7, 1993) (affirming grant of summary judgment to employer based upon defense that “employee’s causes of action against employer are precluded by the exclusivity provision of the South Carolina Workers’ Compensation Act”); Loges v. Mack Trucks, Inc., 308 S.C. 134, 139, 417 S.E.2d 538, 541 (1992) (affirming “summary judgment dismissing” some of plaintiff’s causes of action based on exclusivity provision of the Act).

Whether the exclusivity provision of the South Carolina Workers’ Compensation Act is triggered “is a jurisdictional question.” See Edens, 359 S.C. at 439-40, 597 S.E.2d at 866. While a circuit court has “subject matter jurisdiction over tort claims, certain cases may be taken from the trial court’s original jurisdiction by the General Assembly.” Sabb v. S.C. State Univ., 350 S.C. 416, 423, 567 S.E.2d 231, 234 (2002). “The General Assembly has vested the South Carolina Workers’ Compensation Commission with exclusive original jurisdiction over employees work-related injuries.” Posey, 378 S.C. at 223, 661 S.E.2d at 402 (citing Sabb, 350 S.C. at 423, 567 S.E.2d at 234). “It is the policy of South Carolina courts to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers’ Compensation Act.” Posey, 378 S.C. at 216, 661 S.E.2d at 399 (citing Dawkins v. Jordan, 341 S.C. 434, 439, 534 S.E.2d 700, 703 (2000)).

## ARGUMENT

### I. THE CIRCUIT COURT DID NOT ERR IN FINDING THAT THE EXCLUSIVITY PROVISION OF THE SOUTH CAROLINA WORKERS' COMPENSATION ACT WAS A BAR TO APPELLANT'S TORT CLAIMS

Because Patel accepted the benefits of the South Carolina Workers' Compensation Act when he settled his workers' compensation claim, the circuit court correctly determined the exclusivity provision of the Act was a bar to Patel's tort claims.

Patel argues the circuit court erred in its finding that the South Carolina Workers' Compensation Act was a bar to his tort claims since Microtel Inn denied liability under the Act and because the preponderance of the evidence does not support the existence of an employment relationship at the time of Patel's injury. Patel argues that the "the circuit court essentially found that the mere fact of Mr. Patel being on the employer's premises at the time of his injury, makes the injury subject to the exclusivity provision of the Act, giving Mr. Patel no remedy under the Act or in Tort." Appellant's Initial Br. pp. 7-8.

Contrary to Patel's characterization of the circuit court's ruling, the circuit court did not determine whether an employment relationship existed at the time of Patel's injury or whether the injury was otherwise compensable under the Act. Rather, the circuit court's sole inquiry was whether the voluntary settlement of Patel's workers' compensation claim extinguished his tort claims. The court found that both Patel and Microtel Inn accepted the provisions of the Act when Microtel Inn agreed to pay, and Patel agreed to accept, compensation of \$300,000 on behalf of Patel's injury. The court held that "[Patel]'s act of accepting the benefits afforded by the Act effectively extinguished his common law remedies against his employer." Order Granting Def.'s

Mot. for Summ. J. at p. 6 (C. Newman, J.) The proper question on appeal is thus whether Patel's settlement of a disputed claim and acceptance of benefits under the Act invokes the exclusivity provision of the Act to bar his common law claims.

The exclusivity provision of the South Carolina Workers' Compensation Act, Section 42-1-540, provides as follows:

The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death. . . .

S.C. Code Ann. § 42-1-540 (2015).

Section 42-1-540 "is an exclusivity provision, disallowing tort suits against the employer and limiting the injured employee's rights and remedies to those provided by the Workers' Compensation Act." Machin v. Carus Corp., 419 S.C. 527, 534, 799 S.E.2d 468, 471 (2017). "The South Carolina Workers' Compensation Act . . . is the exclusive remedy against an employer for an employee's work-related accident or injury." Edens, 359 S.C. at 441, 597 S.E.2d at 867. "The exclusive remedy doctrine was enacted to balance the relative ease with which the employee can recover under the Act: the employee gets swift, sure compensation, and the employer receives immunity from tort actions by the employee." Strickland v. Galloway, 348 S.C. 644, 646, 560 S.E.2d 448, 449 (Ct. App. 2002). The Act provides that when an injured employee accepts the benefits of the provisions of the Act, his common law remedies against his employer are extinguished. McCaskey v. Daniel Int'l Corp., 442 F.Supp. 1360, 1362 (D.S.C. 1977); S.C. Code Ann. 42-1-540.

Patel argues the Act's exclusivity provision applies to bar civil claims only where the employer admits liability under the Act or where the parties litigate it to a conclusion on the merits and the claim is found to be compensable. However, Section 42-1-540 contains no such prerequisite. Rather, Section 42-1-540 states that the exclusivity provision applies "when [the employee] and his employer have accepted the provisions of this title, respectively, **to pay and accept compensation** on account of personal injury or death by accident[.] . . .". S.C. Code Ann. § 42-1-540 (emphasis added). Respondent has not found, nor has Appellant cited, any case law which interprets Section 42-1-540 as containing the prerequisite that Appellant advocates for. "The compensation afforded by the Act is statutory in character, and the right of any claimant thereto is dependent upon the terms and conditions of the statute." *Id.* (citing Owens v. Herndon, 252 S.C. 166, 165 S.E. (2d) 696 (1969); Young v. Hyman Motors, Inc., 199 S.C. 233, 19 S.E. (2d) 109 (1942)). Furthermore, such a prerequisite would be inconsistent with the general objective to encourage parties in litigation to compromise and resolve their differences.

Patel argues the circuit court's decision gives Patel "no remedy under the Act or in Tort." Appellant's Initial Br. pp. 7-8. This is incorrect. In fact, Patel was afforded various remedies under the Act. A remedy exists under Section 42-17-20 to request a hearing before the Commission to adjudicate issues in dispute. Section 42-3-180 provides "all questions arising under the Act, if not settled by agreement of the parties, shall be determined by the Commission." If Patel thought that his employer wrongfully denied liability under the Act, he had the option of requesting a hearing before the Commission for a determination as to liability and compensability. Instead, he chose to

enter a voluntary settlement with Microtel Inn per Section 42-9-390, which permits employees and employers to enter into voluntary settlements. Since remedies were available to Patel under the Act, he no longer has a right to bring a common law action. See Cook v. Mack's Transfer & Storage, 291 S.C. 84, 88 352 S.E.2d 296, 299 (Ct. App. 1986) (“[W]here a remedy exists under the statute, the injured worker no longer has the right to bring a common law action to enforce his claim.”); S.C. Code Ann. § 42-1-540.

Patel suggests when an employee brings a workers' compensation claim and the employer denies liability under the Act, the employee should be allowed to both settle the claim *and* sue their employer in tort. This view loses sight of the purpose of the Act, which, as explained by the court in Cook, is to provide a balance of advantages to both employees and employers in order to afford the widest coverage for work-related injuries:

Workers' compensation was enacted to correct a perceived inadequacy of the common law to provide a remedy for employees who sustain work related injuries. The common law required the worker to prove he was injured as a result of fault on the part of his employer in order to receive compensation. It also gave the employer the defenses of assumption of risk, contributory negligence, and the fellow servant rule. Injured employees often received little or no compensation because of the difficulty of proving the employer's negligence or because of the availability of a defense to bar recovery. The Workers' Compensation Act was founded upon a recognition that it is desirable to discard the common law doctrines of tort liability in the employer-employee relationship and substitute a duty of the employer, regardless of fault, to compensate the employee, in predetermined amounts based upon his wages, for loss of earnings resulting from accidental injury arising out of and in the course of his employment.

**In effect, the Workers' Compensation Act shifts from the employee to the employer the risk of work-related injuries incident to modern industrial activity. In return, it**

requires the worker, as a condition for receiving the benefits of the Act, to surrender his right to sue at common law. This balancing of advantages is embodied in the exclusive rights and remedies provision of the Act[.] . . . [citing Section 42-1-540].

This provision bars all actions against an employer where a personal injury to an employee comes within the Act. It makes the Act the exclusive means of settling all such claims. **In some cases, the amount of compensation available under the Act may be substantially less than could be recovered in a successful common law action; but in other cases the employee will receive benefits he would not otherwise have enjoyed because of his inability to establish the employer's common law liability. This is a balance struck by the Legislature in order to afford the widest practical coverage for work related injuries.**

The Workers' Compensation Act provides an exclusive system of compensation in derogation of common law rights and is not cumulative or supplemental thereto, but wholly substitutional.

Cook, 291 S.C. at 86-88, 352 S.E.2d at 298 (emphasis added; internal citations omitted.)

By voluntarily settling his workers' compensation claim with his employer, Patel acknowledged the risk the Commission could make an adverse determination as to liability and compensability, and that a tort action could likewise fail. Patel received swift, sure compensation and in return, surrendered his right to sue his employer in tort.

## **II. THE CIRCUIT COURT DID NOT ERR IN FINDING THAT THE SETTLEMENT AGREEMENT AND RELEASE WAS A BAR TO APPELLANT'S TORT CLAIMS**

The circuit court correctly determined that Patel released his tort claims when he accepted payment of benefits and executed the workers' compensation Settlement Agreement and Release, despite Microtel Inn denying liability in the Release.

Patel contends the present case is distinguishable from Smith v. T.H. Snipes & Sons, 306 S.C. 289, 411 S.E.2d 439 (1991) and Martin v. Lockheed Martin Logistics Servs., Greenville County Court of Common Pleas, Civil Action No. 2019-CP-23-00584, 2020 S.C. C.P. LEXIS 2133 (July 31, 2020). In both cases, the court found the prior payment of benefits under the Act precluded an action in circuit court. Patel attempts to distinguish Smith and Martin from the present case by pointing out that in those cases, the Workers' Compensation Commission had made a ruling on the merits of the claim and awarded benefits. However, it is evident that the existence of such rulings were immaterial to the courts' decisions. Neither court deemed it necessary to even address in the decisions whether a ruling on the merits of the workers' compensation claim had been made. Neither court interpreted Section 42-1-540 as containing a prerequisite that it applies only when liability under the Act has been admitted or adjudicated. Both courts cited Cook and Section 42-1-540 for the proposition that "other rights and remedies accruing to an employee against his employer are excluded once such employee avails himself of benefits under the Act." Smith, 306 S.C. at 292, 411 S.E.2d at 441; Martin, 2020 S.C. C.P. LEXIS 2133, at \*33. Finally, although both courts engaged in an analysis of the statutory employee test, both courts held as an alternative ruling – irrespective of employee status – that the employees' actions were barred by the prior payment of benefits under the Act.

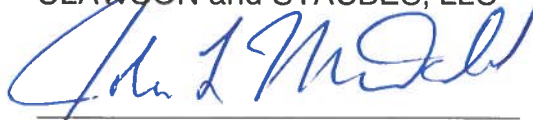
The language of the Release signed by Patel unambiguously states it is a "full and final clincher" that is intended to settle the matter "in its entirety." See Workers' Compensation Agreement and Final Release at p. 2. The Release states that "Claimant hereby asserts that he recognizes that his consent to, and the approval of, this

Settlement Agreement and Release is a final determination and adjudication of all benefits under the South Carolina Workers' Compensation Act . . ." See id. p. 4. When Patel signed the Release and accepted \$300,000 from his employer, he accepted the benefits afforded by the Act and his common law remedies against his employer were extinguished.

### CONCLUSION

Based on the foregoing arguments, Florence Investment, LLC d/b/a Microtel Inn & Suites prays this Honorable Court deny Shaileshkumar Patel's appeal and affirm the May 27, 2022 Order of the Florence County Court of Common Pleas.

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**SC Court of Appeals**

**PROOF OF SERVICE OF  
INITIAL BRIEF OF RESPONDENT**

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Appellate Case No.: 2022-000907

Shaileshkumar Patel ..... Appellant,

v.

Florence Investment, LLC d/b/a Microtel Inn & Suites  
and John Doe..... Respondent.

**PROOF OF SERVICE**

I certify that I have served the Initial Brief of Respondent on Shaileshkumar Patel by e-mailing a .pdf copy of it to his attorneys, on January 12, 2023, using their primary e-mail addresses listed in the Attorney Information System (AIS). A copy of the sent e-mail is enclosed herewith.

January 12, 2023

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**Subject:** Re: Patel, Shaileshkumar v. Florence Investment, LLC d/b/a Microtel Inn & Suites, et al.  
(File #: 20210248.001) - Claim No: 10258683  
**Attachments:** Initial Brief of Respondent (SIGNED)

Good Morning,

Please see attached for service the Initial Brief of Respondent.

Regards,  
Tom



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