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**Jan 20 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

The Honorable Clifton Newman, Presiding Court Judge  
Trial Court Case No. 2020CP2102414

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Appellate Case No. 2022-000907

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Shaileshkumar Patel.....Appellant,

v.

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

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REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities.....ii

Arguments.....1

Conclusion.....5

TABLE OF AUTHORITIES

CASES

*Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313 (1999).....3

STATUTES

S.C. Code Ann. § 42-1-100.....3

S.C. Code Ann. § 42-1-540.....1, 2

S.C. Code Ann. § 42-5-40.....3

S.C. Code Ann. § 42-9-10(c).....3

## ARGUMENTS

In their brief, Respondent suggests that this Court should simply ignore the question of whether the court erred in finding that there was an employment relationship between the parties or whether the circuit court erred in failing to make a finding of an employment relationship between the parties before finding that it lacked subject matter jurisdiction to hear the Appellant's claims at common law. Rather, Respondent argues that the circuit court properly found that Appellant's claims at common law should be dismissed due to that court's lack of subject matter jurisdiction because those claims were barred by the exclusivity provision of the South Carolina Workers' Compensation Act (hereinafter, "the Act"), without making any finding regarding the existence of an employment relationship. Respectfully, the circuit court and Respondent fail to appreciate the paradox in finding that the exclusivity provision of the Act, which requires an employment relationship, applies, without making a finding concerning an employment relationship.

The exclusivity provision of the Act 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 and loss of service or death.

S.C. Code Ann. § 42-1-540.

Thus, for the exclusivity provision to apply such as to extinguish the common law rights of a Plaintiff, there must be an employment relationship. It is axiomatic that in order for an employment relationship to exist in the context determining whether a workplace injury falls under the Act, the workplace injury must arise out of and occur in the course and scope of the employment. If this Court were to accept Respondent's characterization of the circuit court's

order, which was almost wholly drafted by Respondent, that the circuit court made no finding regarding an employment relationship, then the finding that the exclusivity provision applied such that the circuit court lacked subject matter jurisdiction, was in error, or at the very least, premature and therefore erroneous.

Assuming *arguendo*, this Court was to ignore the question of whether the circuit court erred in failing to find an employment relationship, or in assuming an employment relationship between the Appellant and Respondent, as suggested by Respondent, the circuit court's order must still be reversed because the Settlement Agreement and Release between the parties does not otherwise trigger the exclusivity provision. Pursuant to S.C. Code Ann. § 42-1-540, requires that an employer and employee "accept[] the provisions of the title, respectively, to pay and to accept compensation on account of personal injury." In the underlying workers' compensation claim, Appellant was shot in a brutal attack, which rendered him a quadriplegic. Respondent denied his claim for benefits under the Act, placing him in a destitute situation. Rather than receiving "swift, sure compensation" as characterized by Respondent, and as intended by our legislature, Appellant suffered and waited for nearly five months without any income or aid, and with mounting medical debt, before he ultimately settled his claim with Respondent, under economic duress. Respondent did not pay a single cent for Appellant's medical bills, nor did Respondent pay temporary benefits while Appellant was incapacitated due to his traumatic spine injury. Thus, because Respondent refused to accept the terms of the Act and did not agree to pay compensation, such as lifetime benefits that may be awarded a Claimant with quadriplegia, the exclusivity provision does not apply such as to extinguish Appellant's rights under common law.

While Respondent argues that there is no case law in support of Appellant's position regarding the application of the exclusivity provision, the plain language of the statute provides

that an employer must pay, and the employee must accept compensation, which did not happen. See *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 326 (1999) (“An employer who refuses or neglects to secure such compensation becomes liable under the Act or in an action at law.” (citing S.C. Code Ann. § 42-5-40)). Instead, Respondent entered a settlement agreement with a broken and destitute injured former employee who was denied compensation for nearly five months, and that settlement agreement was made on a “doubtful and disputed” basis, with Respondent denying the claim. Respondent never admitted or was found liable under the Act. Therefore, the Respondent may be subject to an action at common law. Additionally, none of the cases cited by Respondent support their position that a “doubtful and disputed” settlement of workers’ compensation claim, wherein employer denies coverage of an injury under the Act, qualifies as payment of “compensation,” or benefits under the Act, or otherwise acts as a bar to Appellant’s common law rights. On the contrary, compensation under the Act is delineated and prescribed by statute and is defined as “the money allowance payable to an employee or to his dependents as provided for in this title.” S.C. Code Ann. § 42-1-100. The compensation and other benefits prescribed in the Act, such as temporary benefits, indemnity, payment of medical bills and treatment, and lifetime benefits, such as those that may be awarded to someone with paralysis or brain injury pursuant to S.C. Code Ann. § 42-9-10(c), were indisputably never paid.

Additionally, if this Court were to accept Respondent’s position that no finding by the circuit court of an employment relationship is necessary to bar Appellant’s rights to sue under common law, then argument over whether the Appellant is statutorily barred is moot, and the sole issue is whether Appellant is contractually barred by the Settlement Agreement and Release. As discussed and demonstrated at length in Appellant’s brief, the plain language of the settlement agreement explicitly releases only claims *under the Act*. The Settlement Agreement and Release,

drafted and prepared by counsel for Respondent, is absolutely devoid of any language releasing Respondent's rights to sue at common law. Thus, the Respondent's rights at common law could not have been extinguished by the contract between the parties, as erroneously found by the circuit court.

In support of their Argument, Respondent argues that to allow Appellant to sue "loses sight of the purpose of the Act . . . which is to provide a balance of advantages to both employees and employers in order to afford the widest coverage of work-related injuries." Indeed, this balance or "Grand Bargain" envisioned in the Act, provides that in exchange for swift and sure compensation and medical treatment for work injuries given by the employer, the employee gives up his right to sue, providing a statutory cap on the employer's liabilities. However, the "Grand Bargain" expressed in the Act was not intended to allow employers to use their shield against tort liability and a cap on their total potential liabilities, if they do not avail themselves of the Act by both becoming subject to the Act and by agreeing to pay compensation and benefits prescribed by the Act. To allow employers such as Respondent to hide behind the exclusivity provision of the Act, while shirking their responsibilities to their employees by failing to pay benefits and leaving them destitute, would subvert the purpose of the Act and make the "Grand Bargain" a raw deal for employees that was never intended by our legislature. Further, if the Act were viewed under contract principles, a breach by one party would excuse the performance of the other. Respondent has breached this contract or "Grand Bargain" embodied in the Act, and to provide statutory protections from common law actions to employers who do not comply with the terms of the Act, would perpetuate great injustices, such as that to Appellant, to injured workers throughout our State.

#### CONCLUSION

Having made this Reply to the Brief of Respondent, the Appellant would respectfully submit that this Court should reverse the judgment, findings of fact and conclusions of law of the Circuit Court.

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Shaileshkumar Patel.....Appellant,

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and John Doe.....Respondent.

**PROOF OF SERVICE**

I certify that I have served Reply Brief of Appellant, on the attorney of record for the Respondent, Florence Investment, LLC d/b/a Microtel Inn & Suites and John Doe, via email and/or by depositing a copy in the United States Mail, postage prepaid, on the 20<sup>th</sup> day of January, 2023, addressed as follows:

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**January 20, 2023**

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The Honorable Jenny Abbott Kitchings

Clerk of Court, SC Court of Appeals

1220 Senate Street

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RE: Shaileshkumar Patel v. Florence Investment, LLC d/b/a Microtel Inn &  
Suites and John Doe

Appellate Case No: 2022-000907

Our File No: 17-826-01-200-20

Dear Ms. Kitchings:

Please find attached for filing, Reply Brief of Appellant, along with our Proof of Service, evidencing that we have served the Reply Brief on all interested parties.

Respectfully,

LAW OFFICE OF  
DARRELL THOMAS JOHNSON, JR., LLC

s/Joshua R. Fester

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Enclosures as stated