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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

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

Appellate Case No. 2022-000907

Shaileshkumar Patel...Appellant,

v.

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

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE CIRCUIT COURT ERRED IN FINDING THAT THE EXCLUSIVITY PROVISION OF THE SOUTH CAROLINA WORKERS COMPENSATION ACT WAS A BAR TO APPELLANT'S TORT CLAIMS

2. WHETHER THE CIRCUIT COURT ERRED IN FINDING THAT THE DOUBTFUL AND DISPUTED CLINCHER AGREEMENT IN THE WORKERS' COMPENSATION CLAIM WAS A RELEASE OF APPELLANT'S TORT CLAIMS

STATEMENT OF THE CASE

This case arises out of a tragic incident wherein Mr. Shaileshkumar Patel (hereinafter, "Mr. Patel" or "Appellant") was rendered a quadriplegic as a result of a shooting by an unknown assailant while returning to his room at the Defendant's hotel. The Appellant asserted that the Defendant Respondent was on notice that there was a significant increase in criminal activity on and around the premises and failed to take any action to prevent or deter the activity to reduce the dangerous condition. According to the Respondent, the Appellant was not on the clock and was returning from a personal shopping trip to Wal-Mart with his daughter at the time of the shooting.

The Appellant originally sought relief before the South Carolina Workers Compensation Commission by filing for benefits under the Act. The Respondent denied that claim alleging that the injury did not arise out and in the course of scope of his employment and, as a result, was not compensable. Prior to a hearing on the merits of the Workers' Compensation claim, and with Claimant's chances of prevailing doubtful given the facts, the Workers Compensation claim was settled on a "doubtful and disputed basis" whereby "Defendants continue to deny liability." R. p. 135. As part of the agreement, "Defendants maintain[ed] that substantial evidence support[ed] their denial and that had the claim not settled, it [was] unlikely Claimant would have prevailed on the issue of compensability at a hearing." *Id.* The agreement further stated as follows:

> Defendants assert that there is no evidence that the assailant was a guest or in any way connected to the hotel. The motive behind the shooting is unknown

> and appears to be a random and unforeseeable act of violence. While Claimant alleges he was a 24 hour on call employee, required to live at the hotel in order to fulfill his job duties and therefore was working at the time of the accident, Defendants maintain the greater weight of the evidence indicates Claimant's job duties were limited to front desk shift work, which he was not engaged in at the time of the shooting, and that he was not required to live at the hotel in order to fulfill the duties of his job. Defendants maintain that multiple witnesses would have testified that Claimant's only job was working the front desk during scheduled shifts and this his job did not require him to live at the hotel. As such, Defendants maintain Claimant was working and therefore the injuries did not occur while in the course or scope of employment.

Id.

The Agreement then states that "the purpose of this settlement is to resolve any and all issues arising under the South Carolina Workers' Compensation Act (hereinafter, "the Act") as it relates to the alleged accident of October 23, 2017. R. p. 135 - 136. The scope of the Agreement drafted by Defendant was expressed at several points and defined as follows:

> The purpose of this settlement is to resolve any and all issues arising under the South Carolina Workers' Compensation Act as it relates to the alleged accident of October 23, 2017; *Id.*
>
> Defendants have agreed to pay and Claimant has agreed to accept the total final settlement sum of Three-Hundred Thousand Dollars and no/100 ($300,000.00) in full settlement and satisfaction of every liability of whatsoever nature or kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with said alleged work accident occurring on or about October 23, 2017, while Claimant was an employee of Florence Investment, LLC dba Microtel Inn & Suites; R. p. 136.
>
> Claimant does hereby acknowledge that Defendants have fully, finally, and completely paid and discharged each and every one of their obligations, liabilities, and responsibilities under the South Carolina Workers' Compensation Act and that said sum is being paid in full and final satisfaction of all claims whatsoever arising from the alleged work accident occurring on or about October 23, 2017. R. p. 138
>
> Upon the payment . . . and acceptance of said sum by Claimant, Defendants be, and they hereby are, fully and forever discharged of all liability, obligations and/or responsibilities of whatsoever nature and kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid alleged work accident occurring on or about October 23, 2017, while

> Claimant was an employee of Florence Investment, LLC dba Microtel Inn & Suites. R. p. 138.

After settlement of the Workers' Compensation claim on a doubtful and disputed basis, Mr. Patel filed this claim in the Florence County Court of Common Pleas, alleging that the Respondent was negligent in taking reasonable steps to protect its guests. After a period of discovery, Respondent moved for summary judgment, claiming that Appellant's tort claims against Respondent 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 Respondent's motion. In the Order, the Circuit Court held that it lacked subject matter jurisdiction, and found that the exclusivity provision of the Act, applied to the present case such that the Appellant's claims in tort were barred and that the Agreement and Release was also a release of his tort claims. This appeal followed.

STATEMENT OF THE FACTS

On October 23, 2017, Appellant was assaulted in the parking lot of a hotel operated by the Respondent, located at 1912 Enterprise Drive in Florence, South Carolina. At the time, Appellant was employed by the Respondent's hotel and lived with his family in the hotel. On the night of the assault, Appellant and his daughter had gone to Walmart to shop. Upon returning to the hotel parking lot, Appellant pulled his vehicle into the parking lot. He was followed into the parking lot by another vehicle. Appellant 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 Appellant around the parking lot two more times before exiting his vehicle, approaching Appellant's vehicle and shooting into the vehicle, striking Appellant, and rendering him a quadriplegic. The identity of the assailant was never discovered.

As discussed above, Appellant originally brought a Workers' Compensation claim in reference to his injuries stemming from the assault. Respondent denied this claim, alleging that the injury did not arise out of the course and scope of Appellant's employment and. To support their position, Respondent's owner and managing agent, Raj Patel, testified that the Appellant was a front desk clerk only and had no other duties when he was not on shift. R. p. 196, ln. 4-17. Raj Patel disputed that Appellant was "on call" for work 24/7 and he also secured numerous statements from other employees of Respondent supporting Raj Patel's contention. R. p. 220 – 223. During his deposition in the workers' compensation case, Raj Patel stated that the Appellant was not required to live at the hotel and was never authorized or requested to do any shopping for the hotel. Instead, he testified that Appellant was allowed to live on the premises, only as a courtesy, and was always free to make other living arrangements, without having any impact on his employment. *Id* at p. 191, ln. 13 – 22. Furthermore, Raj Patel claimed that he was the only person that was allowed to do the shopping for the hotel, as the company credit card was in the name of Raj Patel and had never been given to anyone else. *Id* at p. 198, ln. 10 – 25, p. 199, ln. 1 – 10. This assertion undermined any allegation by Appellant that he could have been engaged in work activities while going or coming back from Walmart to shop, or that he was shopping for the hotel.

Prior to a hearing on the merits of the workers' compensation claim, and faced with numerous statements of employees and Raj Patel, clearing defining the scope of employment as limited to front desk clerk duties, the parties agreed to mediate and ultimately settled on a "doubtful and disputed" agreement as discussed above. As clearly set forth in the agreement, the Respondent steadfastly maintained its denial that this injury fell within the scope of employment and the Agreement only releases claims under the Act.

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. Belini*, 359 S.C. 433, 440-441 (Ct. App. 2004) (internal citations omitted). Coverage under the Workers' Compensation Act depends on the existence of an employment relationship. *Id* at 439 (citing *Mcdowell v. Stilley Plywood Co.*, 210 S.C. 173, 41 S.E.2d 872 (1947)). Whether or not an employer-employee relationship exists is a jurisdictional question. See *Nelson v. Yellow Cab Co*., 349 S.C. 589, 564 S.E.2d (2002). Thus, whether the exclusivity provision of the Act applies is a jurisdictional question. Where the issue involves a jurisdictional question, the Court has the power and duty to review the entire record and decide the jurisdictional facts in accord with the preponderance of the evidence. *Edens*, 359 S.C. At 440, (citing *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 320 523 S.E.2d 766 (1999)).

ARGUMENTS

I. THE CIRCUIT COURT ERRED IN FINDING THAT THE EXCLUSIVITY PROVISION OF THE SOUTH CAROLINA WORKERS' COMPENSATION ACT WAS A BAR TO APPELLANT'S TORT CLAIMS

The Circuit Court erred in finding that the exclusivity provision of the Act applies to the unique facts of this case. The primary inquiry in applying the exclusivity provision of the Act is whether an employer-employee relationship existed at the time and under the circumstances of the injury, and whether the injury falls within the rights and remedies granted by the Act. In order to be compensable under the Act, an injury must both arise out of and be within the course and scope of employment. "The two parts of the phrase 'arising out of and in the course of employment' are not synonymous." *Ardis v. Combined Ins. Co.*, 380 S.C. 313, 320, 669 S.E.2d 628, 632 (Ct. App.

2008). "Arising out of' refers to the origin of the cause of the accident; 'in the course of' refers to the time place, and circumstances under which the accident occurred." *Baggott v. Southern Music, Inc.*, 330 S.C. 1, 5, 496 S.E.2d 852, 854 (1998). Both of these elements must exist simultaneously before compensation is allowed.

The preponderance of the evidence does not support an employment relationship at the time of Mr. Patel's workplace injury, such that the exclusivity provision of the Act applies, barring Appellant's claim. In the underlying workers' compensation claim, the employer denied the compensability of the claim. This was based on the evidence developed during the investigation, which demonstrated that Mr. Patel was not in the scope of his employment at the time of his injury. In the case at bar, the evidence overwhelmingly demonstrates that neither element for compensability can be satisfied and that there was no relationship between his injury and his employment, such that the exclusivity provision does not apply. The testimony of the owner, Raj Patel, was clear that the Plaintiff's only role was that of a front desk clerk and that Plaintiff was never required, or even authorized, to purchase items for the business. In fact, according to Raj Patel no one was authorized to do so other than him as he was the only person authorized to use the business credit card. The Defendant also provided numerous written statements from other employees which supported this assertion. Further, Raj Patel, the owner and managing agent of Defendant, testified that Plaintiff was allowed, but never required, to live on the premises.

Although our courts have found in numerous cases that there are circumstances, when injuries arising out of acts outside of an employee's regular duties may be compensable, our courts have consistently held that there must be some causal connection between the injury and the employment. See *Osteen v. Greenville County Sch. District*, 333 S.C. 43, 508 S.E.2d 21 (1998). In fact, this Court recently addressed this requirement in the factually similar case of *Patel v. BVM*

Motel, LLC, 433 S.C. 337, 857 S.E.2d 564 (2021). In *Patel*, the Claimant was murdered at the hotel where she worked and lived. In affirming a finding of compensability, the Court identified all of the factors that supported the causal connection requirement, the most significant of which being that the employer admitted that the employee was required to live on the premises and was required to be "on call" 24/7, applying the "bunkhouse rule" which allows for compensability when the nature of an employees work requires the employee to live on the employer's premises, such that his residence on the employer's premises furthers the interests of employer, and the injury arose form a hazard existing on the employer's premises. See *Pierre v. Seaside Farms, Inc.,* 386 S.C. 534, 549, 689 S.E.2d 615, 623 (2010).

Unlike in *Patel*, the Defendant in the present case has adamantly denied that the employee was required to live on the premises but, instead, had requested to be allowed to do so. In addition, the Employer asserts that the Plaintiff was never allowed to shop for the business and had no duties outside of the duties as a front desk clerk. At the time of his brutal assault, Mr. Patel was simply a guest at the hotel and the injury was in no way connected to work. In the absence of an adjudication on the merits by the Workers' Compensation Commission as to compensability for the injury, the circuit court must determine whether the preponderance of the evidence supported that the employee's injury falls under the Act. The circuit court erred in finding that the exclusivity provision applied, given the overwhelming crush of evidence that Mr. Patel's injury did not arise out of his employment, and that it did not occur in the course of his employment. In so doing, the circuit court has 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.

II. THE CIRCUIT COURT ERRED IN FINDING THAT THE SETTLEMENT AGREEMENT AND RELEASE WAS A RELEASE AS TO APPELLANT'S TORT CLAIMS

The circuit court erred in finding that Mr. Patel's claims in tort are barred due to the settlement agreement and release in Mr. Patel's workers' compensation claim, pursuant to *Smith v. T.H. Snipes & Sons,* 306 S.C. 289, 411 S.E.2d 439 (1991) and *Martin v. Lockheed Martin Logistic Servs.*, Greenville County Court of Common Pleas, Civil Action No. 2019-CP-23-00584. However, both of these cases are clearly distinguishable form the present case, as they both involved plaintiffs who sought remedy in tort when they had workers' compensation claims in which the Commission had ***made a ruling*** on the merits of the claim and awarded benefits.[1] Furthermore, the primary analysis in those cases was whether the tort defendant was a statutory employer for the injured worker of a subcontractor. As a result of the Commission's finding of compensability, the "upstream" employers were then automatically entitled to the exclusive remedy defense, upon showing that they were statutory employers.

In this case, the Appellant applied for benefits under the Act, seeking swift, sure, compensation, which would have included priceless medical treatment for his spinal injury, and two-thirds of his average weekly wage, for the ***rest of his life***. The Respondent denied that this injury was related to his employment and, ultimately, decided to cap its exposure under the Act for a small fraction of its exposure, by way of a doubtful and disputed settlement. The Respondent has never paid a dime of benefits, such as medical and temporary total payments, under the Act. They have, instead, paid a lump sum amount to settle the claim before the Commission, **prior to a decision on the merits**. As such, they opted to defend the tort claim, which foregoes the "Grand Bargain" and necessitates the Appellant proving fault.

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[1] In *Martin*, after a hearing on the merits and an award of benefits, the Claimant agreed to settle permanency in his workers' compensation claim.

Additionally, the circuit court erred in finding that a workers' compensation release acts to extinguish an employee's rights in tort against their employer, relying on in this Court's holding in *Campbell v. Bi-lo*, 301 S.C. 448, 392 S.E.2d 477 (Ct. App 1990). The circuit court's reliance on *Campbell* to support the proposition that the release in this case bars the Appellant's rights in tort are misplaced. In *Campbell*, the Plaintiff filed a claim against the employer for retaliation prior to entering a settlement agreement in her workers' compensation claim. In that case, the Court found that "[r]eading the release as whole, it is plainly limited to claims Campbell may have at common law or under the workers' compensation Act [and that] a claim for retaliatory discharge fits neither category." *Id* at 451. This Court did not hold that any release in a workers' compensation claim acts as a release of the employer's tort liability; rather that the release in that case specifically released any claims at common law. The Settlement Agreement and Release of Mr. Patel's workers' compensation claim is exactly that – a settlement and release of any claims ***under the Act***. It is distinguishable from the release in *Campbell*, as the language in that release provides as follows:

> Under the proposed settlement, the Defendants have agreed to pay, and the Claimant has agreed to accept, the additional sum of Fifteen thousand and no/100 ($15,000.00) Dollars in full settlement and satisfaction of every liability under the Act and otherwise growing out of or in any way connected with said injury by accident occurring on or about September 19, 1984 as well as any other injury by accident sustained while she was an employee of Bi-Lo, Inc.

It further stated that Campbell released and discharged Bi-Lo

> From any and all debts, claims, demands, causes of action, rights of action and liabilities whatsoever of any injury sustained by the Claimant while in the employer's employ on September 19, 1984 or at any other time, including but not limited to**, any right which the Claimant might otherwise have to demand employment benefits for disability, disfigurement, bodily impairment, medical treatment, medicine or drugs, lost time or death under the Act or at Common Law** and specifically including any right which Claimant might otherwise have to demand further benefits by way of compensation or medical care under the Act because of a change in condition

> hereinafter . . . whether or not arising out of . . . Claimant's injury by accident aforesaid or any other injury while in the employ of Bi-Lo, Inc. and each and every consequence thereof, whether known or unknown

Id at 451 - 452.

By way of the release in *Campbell*, the plaintiff/claimant in that case explicitly released any rights at common law and any claims as to any injuries while employed with that employer. Mr. Patel made no such agreement. The Settlement Agreement and Release endorsed by Mr. Patel, as demonstrated above, refers only to a release of liabilities and claims ***under the Act***, and does not release any claims under common law, explicitly or implicitly. Furthermore, since errors in drawing contracts are construed against the drafter, any ambiguity as to the nature and extent of the release should be construed against the Respondent. See *Williams v. Teran, Inc.*, 266 S.C. 55, 60, 221 S.E.2d 526, 529 (1976) (noting the rule of contract interpretation that an ambiguous contract will be construed against the drafting party); *Chasserau v. Global Sun Pools, Inc.*, 373 S.C. 168, 175, 644 S.E.2d 718, 722 (2007) ("[A] court will construe any doubts and ambiguities in an agreement against the drafter of the agreement."). Thus, the court erred in failing to read the Settlement Agreement and Release as a whole with a view to ascertaining and giving effect to the intention of the parties and erred in finding that the agreement released any claims in common law.

CONCLUSION

For the reasons stated above, the Appellant would respectfully submit that this Court should reverse the judgment, findings of fact and conclusions of law of the Circuit Court.

[Signature Block Follows]

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Certificate of Counsel

The undersigned hereby certifies that the Final Brief of Appellant contains all material proposed to be included by any of the parties and not any other material.

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