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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS
THE HONORABLE COURTNEY CLYBURN POPE
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2025-000808
CIVIL ACTION NO. 2023-CP-10-02263

Jeronimo Hernandez Jimenez,

APPELLANT,

versus

Rolando Medrano,

RESPONDENT.

FINAL RESPONDENT'S BRIEF

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COUNTERSTATEMENT OF ISSUES ON APPEAL

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   A. Hernandez's settlement of his workers' compensation claim against Medrano as his employer bars any argument that an issue of fact exists as to whether Hernandez was an employee of Medrano.

   B. By settling his workers' compensation claim against Medrano under the South Carolina Workers' Compensation Act, Hernandez elected to proceed under the Act and may not pursue a tort claim arising from the same accident, including claims arising from all natural consequences flowing from the work-related compensable injury.

   C. The settlement agreement between Hernandez and Medrano in the workers' compensation claim released all claims growing out of or in any way connected with the workplace accident which encompasses any claims arising out of Medrano's alleged post-fall conduct in negligently rendering aid to or transporting Hernandez.

II. The dual persona doctrine does not apply to allow Medrano as Hernandez's employer to be sued in tort where Medrano's obligations to Hernandez following Hernandez's workplace accident are not totally separate from and unrelated to Medrano's obligations as an employer.

COUNTERSTATEMENT OF THE CASE

On May 10, 2023, Appellant Jeronimo Hernandez Jimenez (hereinafter "Hernandez") filed a complaint in the Court of Common Pleas for Charleston County against Respondent Rolando Medrano (hereinafter "Medrano"). [R.pp. 5-7; Compl.] Hernandez alleged that he fell from a ladder while trimming a tree, injuring his back, legs, head, and arms. [R.p. 5; Id. at ¶ 3.] Hernandez alleged that Medrano was negligent and grossly negligent in failing to properly render aid following the accident, exacerbating Hernandez's injury from the fall and leaving him permanently disabled. [R.pp. 6-7; Id. at ¶¶ 8-14.] Hernandez sought actual and punitive damages from Medrano. [R.p. 7; Id. at p. 3.]

Medrano answered the complaint on June 20, 2023, denying its material allegations. [R.pp. 9-12; Answer.] Medrano thereafter filed a motion for summary judgment based upon Hernandez's settlement of a workers' compensation claim filed against Medrano Tree Services, LLC and Medrano arising out of the same workplace accident and the exclusive remedy provided under the South Carolina Workers' Compensation Act, S.C. CODE ANN. § 42-1-10 *et al*. [R.pp. 14-49; Mtn. for SJ and exhibits.] Hernandez filed an opposition to the motion for summary judgment, and Medrano thereafter filed a reply in support. [R.pp. 50-97; 98-112; Opp. and exhibits; Reply and exhibits.]

The motion for summary judgment was heard before The Honorable Courtney Clyburn Pope on March 20, 2025. [R.pp. 113-134; Hearing Tr.] On March 27, 2025, the Trial Court granted summary judgment in favor of Medrano. [R.pp. 1-3; Order.] Hernandez filed and served his Notice of Appeal on or about April 25, 2025.

COUNTERSTATEMENT OF FACTS

On June 30, 2020, Hernandez was involved in an accident where he fell from a ladder while trimming the branches of a tree, injuring his back, legs, head, and arms. [R.p. 5; Compl., ¶ 3.] On the day of the accident, Hernandez was employed by Medrano and his company, Medrano Tree Services, LLC. [R.pp. 34, ll. 1 - 17; 23, ll. 15 - 18; Medrano Dep., p. 11, ll. 1 - 17; Hernandez Dep., p. 8, ll. 15 - 18.]

As part of the employee/employer relationship, Medrano would provide transportation to and from the job sites for Hernandez. Consistent with this practice, Medrano provided transportation to Hernandez to the job site on the date of the accident.

[R.pp. 24, ll. 6 - 8; 37, ll. 15 - 19; 38, ll. 8 - 13; Hernandez Dep, p. 13, ll. 6 - 8; Medrano Dep., pp. 32, ll. 15 - 19; 33, ll. 8 - 13.]

Medrano and Hernandez were working together at the job site on the day of the accident, with Medrano on one tree and Hernandez on another. [R.p. 34, ll. 18 - 22; Medrano Dep., p. 11, ll. 18 - 22.] Hernandez fell from the ladder while trimming the tree. He alleged he was incapacitated after the fall and unable to move due to his injuries. [R.pp. 5; 25, ll. 18 - 22; Compl., ¶¶ 3-4; Hernandez Dep., pp. 22, ll. 18 – 21.] From the time Hernandez fell from the ladder, he could not feel his legs at all, including any pain from his legs. [R.pp. 29, l. 20 – 30, l. 1; Hernandez Dep., pp. 37, l. 20 - 38, 1. 1.]

After Hernandez's fall, Medrano came to attend to Hernandez along with another employee. Medrano instructed the other employees to pick up Hernandez. Hernandez was then loaded into Medrano's truck to transport Hernandez to receive medical care. [R.p. 25, ll. 8 - 25; Hernandez Dep., p. 22, ll. 8 - 25.] During the trip, Medrano noticed Hernandez's condition decline and as a result brought Hernandez to the nearest emergency facility, a fire station that was two minutes away. [R.pp. 26, l. 17; 36, ll. 1 – 10, ll. 19 - 20; Hernandez Dep., p. 24, l. 17; Medrano Dep., pp. 19, ll. 1 - 10, ll. 19 - 20.] Medrano stayed with Hernandez until he was unloaded from the truck and placed on a stretcher by firefighters, loaded into an ambulance, and taken to the Medical University of South Carolina. [R.pp. 27, l. 11 – 28, l. 12; 35, ll. 1 - 20; Hernandez Dep., pp. 25, l. 11 - 26, l. 12; Medrano Dep., p. 15, ll. 1 - 20.]

As a result of his injuries, Hernandez filed a claim with the South Carolina Workers' Compensation Commission against Medrano Tree Services, LLC and Medrano as his employers. [R.pp. 39-49; Settlement Agreement.] The South Carolina Workers'

Compensation Uninsured Employers' Fund was also named as a defendant in the workers' compensation claim because Medrano Tree Services, LLC and Medrano did not have workers' compensation insurance at the time of Hernandez's fall. [R.pp. 30-40; Id. at pp. 1-2.] It was disputed as to whether Medrano Tree Services, LLC and Medrano were required to carry workers' compensation insurance or whether they were exempt from carrying this insurance under the South Carolina Workers' Compensation Act. [R.pp. 41-42; Id. at pp. 3-4.]

Hernandez alleged in the workers' compensation claim that "on or about June 30, 2020, he sustained an injury by accident arising out of and in the course of said employment when he injured [sic] back, right leg, left leg, back, head, right arm, left arm, right shoulder, and left shoulder." [R.p. 40; Id. at p. 2.] As a result of the accident, Hernandez "sought and received medical treatment from medical providers." [R.p. 40; Id.] Hernandez asserted he was entitled to a lifetime award for permanent and total disability. [R.p. 42; Id. at p. 4.]

On or about April 10, 2023, the parties settled the workers' compensation claim (the "Settlement Agreement") under which "the Defendants . . . agreed to pay and the Claimant . . . agreed to accept the sum of One Million, Five Hundred Thousand and no/100 Dollars ($1,500,000.00) 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 injury by accident occurring on or about June 30, 2020, while the Claimant was an employee or alleged employee of Medrano Tree Services, LLC and/or Rolando Medrano Torrez." [R.pp. 40-41; 46; 48 Id. at pp. 2-3, 8, 10.] Under the Settlement Agreement, Hernandez recognized that the Settlement Agreement was a "final settlement of all benefits under the South Carolina Workers' Compensation Act growing out of, or in

any way connected with, the aforesaid injury by accident occurring on or about June 30, 2020, while the Claimant was an employee of Employer." [R.p. 46; Id. at p. 8.]

Hernandez's acceptance of the sum of $1,500,000.00 "fully and forever discharged" "all liability of whatsoever nature and kind, under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the alleged injury by accident occurring on or about June 30, 2020, or any other date, while the Claimant was an employee of Employer, so that upon such payment and the acceptance as aforesaid, this matter be, and it hereby is, *res judicata* and not subject to review under any conditions." [R.p. 48; Id. at p. 10 (emphasis in original).] Under the Settlement Agreement, the parties also expressly agreed: "**Defendants deny payment of any and all medical expenses of whatsoever nature or kind, including past, present and future medical**, and it shall be the express liability of the Claimant, and the Defendants shall have no liability whatsoever." [R.p. 41; Id. at p. 3 (emphasis in original).]

The Settlement Agreement further resolved any dispute as to whether Medrano Tree Services, LLC and Medrano were required to carry workers' compensation insurance under the requirements of the South Carolina Workers' Compensation Act. [R.pp. 41-42; Id. at pp. 3-4.] Hernandez accepted payment from the Uninsured Employers' Fund which reserved its right under the Settlement Agreement to make any claim for reimbursement for payment of the settlement amount against Medrano Tree Services, LLC and Medrano as the employers pursuant to S.C. CODE ANN. § 42-7-200 or otherwise. [R.p. 47; Id. at p. 9.]

Under the Settlement Agreement, the parties stipulated that resolution of the workers' compensation claim would "not in any way prohibit, restrict, bar, or otherwise

infringe upon the Claimant's right to pursue other causes of action outside of the Workers' Compensation claim against third party defendants" [R.p. 45; Id. at p. 7.]

Hernandez's current tort action against Medrano followed on May 10, 2023. [R.pp. 5-7; Compl.]

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c) of the South Carolina Rules of Civil Procedure. Ellis v. Davidson, 358 S.C. 509, 517, 595 S.E.2d 817, 821 (Ct. App. 2004). Rule 56(c) provides a motion for summary judgment shall be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." See Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 42, 747 S.E.2d 178, 181 (2013). "In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment." Id. at 42, 747 S.E.2d at 181-82; Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 425, 746 S.E.2d 35, 38 (2013).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citations omitted). The party seeking summary judgment under Rule 56(c) has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis, 358 S.C. at 518, 595 S.E.2d at 822. "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the

opponent cannot simply rest on mere allegations or denials contained in the pleadings. . . . Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. at 518-19, 595 S.E.2d at 822.

"[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (internal citation omitted). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Ellis, 358 at 518, 595 S.E.2d at 822.

ARGUMENT

I. Hernandez's settlement of his workers' compensation claim against Medrano as his employer bars his tort action against Medrano arising out of the same workplace accident.

Hernandez's arguments in this appeal are premised on his claims that (1) he was not the employee of Medrano; (2) the exclusive remedy provision of South Carolina's Workers' Compensation Act (the "Act") does not apply; (3) he seeks damages for injuries separate and distinct from those he initially sustained when he fell from the tree he was trimming; and (4) the language of the Settlement Agreement does not bar additional claims against by Hernandez against Medrano.

To the contrary, Hernandez's election to bring a workers' compensation claim against Medrano as his employer coupled with his subsequent decision to settle that claim under the provisions of the Act serves as a complete bar to his tort claim against Medrano. Therefore, the Trial Court properly granted summary judgment in favor of Medrano.

A. Hernandez's settlement of his workers' compensation claim against Medrano as his employer bars any argument that an issue of fact exists as to whether Hernandez was an employee of Medrano.

While Hernandez contends in this appeal that he was not the employee of Medrano, he brought a claim before the South Carolina Workers' Compensation Commission against Medrano as his employer. [R.pp. 39; 40-41; 48; Settlement Agreement, pp. 1 (see caption listing Medrano as the Employer); 2-3 (noting claim involved accident occurring on or about June 30, 2020 while Hernandez was "an employee or alleged employee of Medrano Tree Services, LLC and/or Rolando Medrano Torrez"); p. 10.]

Hernandez then settled his workers' compensation claim against Medrano as his employer, agreeing to accept payment of $1,500,000.00 from the South Carolina Workers' Compensation Uninsured Employers' Fund to "fully and forever discharge[] . . . all liability of whatsoever nature and kind, under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the alleged injury by accident occurring on or about June 30, 2020, or any other date, while Claimant was an employee of Employer." [R.p. 48; Id. at p. 10.] Hernandez recognized and agreed that his consent to and approval of the Settlement Agreement was "a final settlement of all benefits under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid injury by accident occurring on or about June 30, 2020, while the Claimant was an employee of Employer." [R.p. 46; Id. at p. 8.] Hernandez's act of settling his workers' compensation claim against Medrano as his employer forecloses any argument in this appeal that there is an issue of fact as to whether Medrano was his employer.[1]

[1] In addition, Hernandez acknowledged in his deposition testimony that he was employed by Medrano. [R.p. 23, ll. 15 - 18; Hernandez Dep., p. 8, ll. 15 – 18.]

B. By settling his workers' compensation claim against Medrano under the South Carolina Workers' Compensation Act, Hernandez elected to proceed under the Act and may not pursue a tort claim arising from the same accident, including claims arising from all natural consequences flowing from the work-related compensable injury.

Through his consent to and approval of the Settlement Agreement, Hernandez accepted the provisions of the Act. When an employee and his employer accept the provisions of the Act, "the employee's remedies under the Act exclude all other rights and remedies of the employee." Harrell v. Pineland Plantation, Ltd., 337 S.C. 313, 325-26, 523 S.E.2d 766, 772 (1999); see also S.C. CODE ANN. § 42-1-540 ("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, . . . as against his employer, at common law or otherwise, on account of such injury, loss of service or death.").

This section of the Act is known as the exclusive remedy provision. As observed by this State's Supreme Court, "it shrouds an employer with immunity from any actions of law instituted by the employee." Harrell, 337 S.C. at 326, 523 S.E.2d at 772. "The exclusivity provision of the Act precludes an employee from maintaining a tort action against an employer where the employee sustains a work-related injury." Poch v. Bayshore Concrete Prods./S.C., Inc., 405 S.C. 359, 366, 747 S.E.2d 757, 761 (2013) (internal citation omitted).

Hernandez argues that because neither Medrano Tree Services, LLC nor Medrano secured workers' compensation insurance at the time of Hernandez's workplace injury, the exclusive remedy provision of the Act does not apply to bar his tort action against Medrano.

Under the Act, if an employer does not secure payment of compensation, then such employer may be liable to the employee "either for compensation under this title ***or*** at law in an action instituted by the employee . . . against such employer to recover damages for personal injury or death by accident." S.C. CODE ANN. § 42-5-40 (emphasis added).

Under these circumstances, the employee must still make a choice – to either seek compensation from his employer under the Act or to bring an action at law against his employer for the recovery of damages. The employee may not recover under both. See Harrell, 337 S.C. at 327, 523 S.E.2d at 773 ("An employer who refuses or neglects to secure such compensation becomes liable ***either*** under the Act ***or*** in an action at law.") (emphasis added).

In this case, Hernandez voluntarily chose, with advice of counsel, to file a workers' compensation claim against Medrano as his employer for his injuries. [R.p. 47; Settlement Agreement, p. 9 (providing attorney for Hernandez represents "that the Claimant has been fully apprised of his rights under the South Carolina Workers' Compensation Act").] Hernandez learned during the workers' compensation case that Medrano did not have a valid workers' compensation insurance policy in place at the time of Hernandez's injury. As a result, he had two options under Section 42-5-40 of the Act. He could continue with the workers' compensation case and any award or settlement would be paid by the Uninsured Employers' Fund (which under S.C. CODE ANN. § 42-7-200 the Fund may pursue reimbursement from the employer) ***or*** he could pursue his claims against Medrano in a tort action.

Hernandez chose to proceed with his workers' compensation claim against Medrano as his employer, and as a result of that choice and through his consent to and

approval of the Settlement Agreement, Hernandez accepted the provisions of the Act, including its exclusive remedy provision. The statute does not predicate applicability of the exclusivity provision on whether the employer pays the award through insurance or whether the award is paid under the Uninsured Employers' Fund for the exclusivity provision to take effect. The only requirement is that the parties agree to proceed under the provisions of the Act. See Harrell, 337 S.C. at 325-26, 523 S.E.2d at 772. Once the parties do so, all other rights and remedies of the employee against his employer are excluded, and the employee may not pursue a tort remedy arising from the same accident.

Further, if the injury was compensable under the Act, then Hernandez is barred from pursuing a tort claim for that injury. Under South Carolina law, every natural consequence that flows from a work-related compensable injury is also compensable under the Act unless the consequence is the result of an independent, intervening cause sufficient to break the chain of causation. Whitfield v. Daniel Const. Co., 226 S.C. 37, 40-41, 83 S.E.2d 460, 462-63 (1954).

In Whitfield, the representative of an employee sought death benefits under the Act after the employee was prescribed drugs by the employer's physician because of the original compensable work-related injury. The prescribed drugs in turn impaired the mental or physical faculties of the employee, causing him to lose control and crash into a bridge which resulted in his death. Id. at 38-40, 83 S.E.2d at 461-62. The Supreme Court held the employee's death was a compensable injury under the Act because aggravation of a compensable injury by medical treatment or a new injury resulting from medical treatment is compensable under the Act. Id. at 41-42, 83 S.E.2d at 463-64; see also Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 436-37, 458 S.E.2d 76, 79 (Ct. App. 1996) (recognizing

aggravation of the primary work-related injury by medical treatment is compensable under the Act, as well as new injuries resulting indirectly from treatment for the original injury); S.C. CODE ANN. § 42-15-70 (providing "the consequences of any such malpractice [by a physician or surgeon furnished by employer] shall be deemed part of the injury resulting from the accident and shall be compensated for as such.").

In Tims v. J.D. Kitts Constr., 393 S.C. 496, 713 S.E.2d 340 (Ct. App. 2011), a claimant was injured at work and became a quadriplegic. The claimant began receiving care from a home healthcare service. The claimant's caregiver took him on an outing to Wal-Mart at his request on a day when the outside temperatures approached a hundred degrees. The caregiver realized she had lost her car keys and left the claimant in the back seat of her unair-conditioned vehicle while she went to look for the keys. When she returned, the claimant suffered a heatstroke lapsed into a coma. The claimant came out of the coma, but incurred some brain damage. Id. at 500-01, 713 S.E.2d at 342.

The Court of Appeals was asked to determine whether the claimant's heatstroke, resulting from becoming trapped in an overheated vehicle, was a natural consequence of the original work-related injury- his quadriplegia - and thus compensable under the Act. Under the natural consequences doctrine espoused in Whitfield, the court found the heatstroke was compensable. Id. at 504-10, 713 S.E.2d at 344-47. The court rejected the argument that the caregiver's negligence was an independent and intervening act that broke the causal chain of the work-related injury. The court instead found that "the negligence of non-physicians connected with the process of treatment or convalescence are within the compensable range of consequences of the original work-related injury." Id. at 506-08, 713 S.E.2d at 345-46.

Hernandez's claims regarding Medrano's alleged negligence in rendering aid and providing transport after the work-related fall and the alleged injuries to Hernandez resulting therefrom involve the natural consequences flowing directly and immediately from the work-related fall. These alleged injuries were even more connected than the subsequent injuries in Whitfield and Tims because Hernandez's work-related fall and Medrano's response to that fall involved a single chain of events not separated in time like the subsequent injuries in Whitfield and Tims. Therefore, any injuries to Hernandez caused by Medrano's response to his work-related fall were compensable under the Act. And because these injuries were compensable under the Act as a natural consequence of the work-related fall, Hernandez's election to proceed with and settle his claims under the Act invokes the exclusive remedy provision of the Act thus barring his tort action against Medrano. For this reason, the Trial Court properly granted summary judgment to Medrano.

C. The settlement agreement between Hernandez and Medrano in the workers' compensation claim released all claims growing out of or in any way connected with the workplace accident which encompasses any claims arising out of Medrano's alleged post-fall conduct in negligently rendering aid to or transporting Hernandez.

The Trial Court also properly granted summary judgment to Medrano because the express terms of the Settlement Agreement bar Hernandez's tort action against Medrano. Hernandez nevertheless contends that the provisions of Settlement Agreement do not bar him from bringing the present tort action against Medrano and that the damages which he seeks in this lawsuit are separate and distinct from the injuries initially sustained by Hernandez when he fell from the tree he was trimming. Hernandez specifically argues that the claims in this lawsuit arise out of Medrano's negligent rendering of medical aid by failing to call for emergency services and instead having his employees pick Hernandez up

and put him in Medrano's truck following his fall and then transporting him to a fire station. Hernandez further claims that Medrano's negligent maintenance and operation of his vehicle contributed to Medrano's inability to transport Hernandez to a hospital instead of a fire station.

The plain and unambiguous terms of the Settlement Agreement, however, bar Hernandez's tort suit against Medrano. Under South Carolina law, settlement agreements are viewed as contracts. Kinghorn v. Sakakini, 426 S.C. 147, 151, 825 S.E.2d 748, 749 (Ct. App. 2019). "The court must ascertain and give effect to the intention of the parties, looking first to the language of the contract." Nichols Holding, LLC v. Divine Capital Group, LLC, 416 S.C. 327, 336, 785 S.E.2d 613, 617 (Ct. App. 2016). "When the language of a contract is clear and unambiguous, the determination of the parties' intent is a question of law for the court." Id. (internal citations omitted).

The clear terms of the Settlement Agreement are broad and fully and forever discharge "all liability of whatsoever nature and kind, under the South Carolina Workers' Compensation Act ***growing out of, or in any way connected with***, the alleged injury by accident occurring on or about June 30, 2020 or any other date, while the Claimant was an employee of Employer." [R.pp. 40, 41, 46, 48; Settlement Agreement, pp. 2, 3, 8, 10 (emphasis added).]

Hernandez's claims against Medrano for his response to the original work-related fall directly flow from that fall. Medrano's decision to place Hernandez in his vehicle transport him in the vehicle to the fire station arose directly from and in immediate response to the workplace injury. The alleged aggravation of injury during transport is not a separate and distinct occurrence, but rather a consequential development of the same compensable

event. Hernandez's workplace fall and transport to the fire station by Medrano in his vehicle are clearly connected. The claims asserted against Medrano in the tort suit would not exist without Hernandez's workplace fall from the tree. Therefore, the post-fall alleged conduct of Medrano "grows out of" and is "connected with" Hernandez's June 30, 2020 workplace accident, and pursuant to the plain language of the Settlement Agreement, any claims against Medrano arising out of the post-fall conduct are barred. See Bowers v. S.C. Dep't of Transp., 360 S.C. 149, 600 S.E.2d 543 (Ct. App. 2004) (applying clear and unambiguous terms of a release to find parties involved in motor vehicle accident released any claims against the SCDOT).

Further, Hernandez sought a lifetime award for permanent and total disability in the workers' compensation claim, which would encompass Hernandez's claims in the tort action that Medrano's response to the workplace fall left Hernandez permanently disabled. [R.pp. 42; 6, 7; Settlement Agreement, p. 4; Compl., ¶¶ 7, 14.] The Settlement Agreement provided that the settlement payment "resolve[d] any and all allegations asserted by the Claimant." [R.p. 43; Settlement Agreement, p. 5.] The parties stipulated in the Settlement Agreement that the sum of $986,333.11 was settlement of the "disputed permanent disability" which represented Hernandez's life expectancy of 45.90 years. [R.p. 44; Id. at p. 6.] The Settlement Agreement thus covered all claims relating to permanent disability which Hernandez claims as damages in the tort suit.

Hernandez nonetheless contends that the Settlement Agreement expressly allows him to bring additional claims, including the tort claims asserted in this lawsuit. The Settlement Agreement provides that the resolution of the Workers' Compensation "does not in any way prohibit, restrict, bar, or otherwise infringe upon the Claimant's right to

pursue other causes of action outside of the Workers' Compensation claim against ***third party defendants***." [R.p. 45; Id. at p. 7 (emphasis added).] The Settlement Agreement thus permits Hernandez to bring a claim against a third party defendant, such as the responders at the fire station or medical providers, for any additional claims relating to the injuries he sustained on June 30, 2020. The Settlement Agreement does not permit Hernandez to bring a claim against a party to the Settlement Agreement for claims growing out of or in any way connected to the June 30, 2020 workplace accident.

Medrano, as a party to the Settlement Agreement, is not a third party defendant against whom a claim may be brought. As provided above, the Settlement Agreement expressly bars any claim against Medrano growing out of or in any way connected with the workplace accident occurring on June 30 2020, and the Settlement Agreement encompassed claims relating to Hernandez's permanent disability. Hernandez's execution of the Settlement Agreement precludes the claims against Medrano asserted by Hernandez in this tort suit. The Trial Court therefore correctly granted summary judgment to Medrano based upon the terms of the Settlement Agreement.

II. The dual persona doctrine does not apply to allow Medrano as Hernandez's employer to be sued in tort where Medrano's obligations to Hernandez following Hernandez's workplace accident are not totally separate from and unrelated to Medrano's obligations as an employer.

Hernandez also contends that Medrano is not immune from tort liability under the dual persona doctrine. Because Hernandez's tort suit is barred by the provisions of the South Carolina Workers' Compensation Act and the plain language of the Settlement Agreement as explained above, the Court does not need to consider whether the dual persona doctrine applies.

To the extent the Court reaches Hernandez's argument regarding the dual persona doctrine, it is completely inapplicable to the facts of this case. The Supreme Court adopted the dual persona doctrine in Mendenall v. Anderson Hardwood Floors, LLC, 401 S.C. 558, 738 S.E.2d 251 (2013). "Under the dual persona doctrine, '[a]n employer may become a third person, vulnerable to tort suit by an employee, if—and only if—it possesses a second persona so completely independent from and unrelated to its status as employer that by established standards the law recognizes that persona as a separate legal person.'" Mendenall, 401 S.C. at 563, 738 S.E.2d at 253 (quoting 6 *Larson's Workers' Compensation Law* § 113.01[1] (Matthew Bender, Rev. Ed. 2012)).

The Supreme Court emphasized that the dual persona doctrine "is a narrow exception, applicable only where the second set of obligations that forms the basis of the tort suit is entirely independent of the defendant's obligations as an employer." Mendenall, 401 S.C at 563-64, 738 S.E.2d at 254. If those sets of obligations are "intertwined such that they cannot be logically separated, application of the dual persona doctrine is inappropriate." Id. at 564, 738 S.E.2d at 254. Quoting Professor Larson, the Supreme Court observed:

> If the dual persona doctrine is to apply, it must be possible to say that the duty arose *solely* from the *nonemployer* persona.... For only in such a case can the second persona be really distinct from the employer persona. In other words, it is not enough ... that the second persona impose *additional* duties. They must be totally separate from and unrelated to those of the employment.

Id. (quoting Larson, *supra*, § 113.01[4](emphasis in original)).

The doctrine is premised on the "notion that the employee is not suing his employer, but rather a separate legal entity that allegedly caused his injury." Mendenall, 401 S.C. at

563, 738 S.E.2d at 253. In adopting the dual persona doctrine, the Supreme Court stressed it would apply "only in truly exceptional situations." Id. at 564, 738 S.E.2d at 254.

The facts of this case do not present a truly exceptional situation. Any duties owed by Medrano[2] to have responded appropriately to Hernandez's workplace fall cannot be completely separated from his employer persona. Here, Hernandez is attempting to sue Medrano for an alleged exacerbation of a work-related injury he claims was proximately caused by the assistance he received by fellow employees as ordered by Medrano as his employer on the job site to assist him following the fall. The assistance was limited to transporting Hernandez from the job site to the fire department in a work vehicle, owned and operated by the employer and regularly used to transport employees, including Hernandez, to and from job sites.

The facts of this case all stem from the work, the job site, and the employer provided transportation. All alleged acts and omissions were performed by the employer or by fellow employees at the instruction of the employer. All alleged acts and omissions took place on the job site or in the work vehicle. Maintaining and servicing the work vehicles was also integral to the employer's business because without these vehicles, work could not be performed and employees could not be transported to the job sites. As a result, the acts and omissions are not "entirely independent" from Medrano's obligations as an employer. It

[2] Hernandez's dual persona argument is premised upon his assumption that Medrano was not the employer and only Medrano Tree Services, LLC was the employer. Again, Hernandez brought and settled a workers' compensation claim against Medrano as the employer. [R.pp. 39-49; Settlement Agreement.] Hernandez is estopped from denying that Medrano was his employer. In addition, Hernandez acknowledged in his deposition testimony that Medrano was his employer. [R.p. 23, ll. 15 - 18; Hernandez Dep., p. 8, ll. 15 – 18.] The application of the dual persona doctrine must be analyzed with Medrano as the employer, not just the LLC as employer as Hernandez does in his argument.

is not possible to say, as required for application of the dual persona doctrine, that the duties owed as alleged in the tort action arose solely from Medrano's nonemployer persona. Because Medrano's response to Hernandez's workplace accident was not totally separate from and unrelated to Medrano's duties as an employer, the narrow and exceptional dual persona doctrine does not apply.

CONCLUSION

For the reasons set forth herein, Respondent Rolando Medrano respectfully requests the Court to the affirm the grant of summary judgment.

Respectfully submitted,

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August 24, 2026.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Respondent's Brief complies with Rule 211(b), SCACR.

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RECEIVED
Aug 24 2026
SC Court of Appeals

August 24, 2026.