

# The South Carolina Court of Appeals

Samuel Washington, Jr., Respondent,

v.

South Carolina Electric and Gas Company; and Emerson  
Electric Company d/b/a Emerson Network Power, and/or  
Emerson Network Power, Defendants,

Of Whom South Carolina Electric and Gas Company is  
the Appellant.

Appellate Case No. 2014-002733

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## ORDER

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South Carolina Electric and Gas Company (SCE&G) appealed an order in a negligence action denying its motion for summary judgment on the ground Washington was SCE&G's statutory employee and was therefore precluded from proceeding with his tort claim because his exclusive remedy was workers' compensation. Because denials of summary judgment are generally unappealable and the limited exceptions to this rule are inapplicable here, this appeal is dismissed. *See Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 216, 544 S.E.2d 38, 49 (Ct. App. 2001) ("[G]enerally, the denial of a motion for summary judgment is not immediately appealable."); *id.* at 216-19, 544 S.E.2d at 49-51 (discussing the types of cases in which our state's appellate courts have reviewed denials of summary judgment).

We acknowledge that in *Cooke v. Palmetto Health Alliance*, this court reviewed the issue of whether a worker was a statutory employee and was therefore barred from proceeding with a tort action under the exclusive remedy provision of the Workers' Compensation Act. 367 S.C. 167, 624 S.E.2d 439 (Ct. App. 2005). However, this case is distinguishable from *Cooke*. In *Cooke*, the issue was raised to the circuit court in a non-jury hearing on the merits of the defendant's

exclusivity defense, rather than in a motion for summary judgment or a motion to dismiss. *Id.* at 173, 624 S.E.2d at 442. This court found the circuit court's order was appealable because it "involve[d] the merits" and was a final determination of the statutory employee issue. *Id.* at 174, 624 S.E.2d at 442 (quoting S.C. Code Ann. § 14-3-330 (1976)). "To involve the merits, an order 'must finally determine some substantial matter forming the whole or a part of some cause of action or defense . . .'" *Id.* (quoting *Mid-State Distribs., Inc. v. Century Imps., Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993)).

In this case, the issue on appeal was raised to the circuit court in a motion for summary judgment. Because "the denial of summary judgment does not *finally* determine anything about the merits of the case and does not have the effect of striking any defense," the statutory employee issue "may be raised again later in the proceedings." *Ballenger v. Bowen*, 313 S.C. 476, 477-78, 443 S.E.2d 379, 380 (1994); *see also Baber v. Greenville Cty.*, 327 S.C. 31, 40, 488 S.E.2d 314, 319 (1997) ("An interlocutory denial of summary judgment is not a final order and is subject to change by the trial court.").

Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

  
FOR THE COURT

Columbia, South Carolina

cc: John A. Massalon, Esquire  
Irish Ryan Neville, Esquire  
S. Kirkpatrick Morgan, Jr., Esquire  
Charles Thomas Slaughter, Esquire  
Margie Bright Matthews, Esquire

**FILED**

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