

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

C. Tolbert Goolsby, Jr., Circuit Court Judge

Case No.: 20111187387

Benjamin Johnson. Appellant,

v.

Franklin Jackson, Daniel S. Harpster, Tantara Transportation, Inc.,
and Palmetto Health Alliance d/b/a Palmetto Health Baptist Respondents.

MOTION FOR REHEARING

Appellant respectfully moves this Honorable Court for a rehearing pursuant to South Carolina Appellate Rule 221. Appellant respectfully submits that neither Tantara nor Harpster should be granted tort immunity because Appellant was not Tantara's statutory employee, its permanent employee, or its borrowed employee. Appellant could not engage in Tantara's basic business operation, which was to transport goods using tractor trailers. Tantara's business does not depend on the assistance of unskilled laymen during the initial loading process. Appellant's loading of the computers only indirectly related to Tantara's basic operation, which was the transport of commercial goods. As such, Appellant should be considered a casual employee whose employment was not in the course of Tantara's basic business operation.

Further, Appellant respectfully submits that as a matter of public policy, Tantara should not be Appellant's statutory employer because granting tort immunity to an employer who uses a temporary employment agency is unjust against the temporary employee. By using Appellant as a temporary employee, Tantara is able to avoid paying

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increased salaries, benefits, and workers' compensation benefits while retaining tort immunity.

Respectfully Submitted,

By:



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October 15, 2012

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PROOF OF SERVICE

The undersigned, an attorney in this matter for the Appellant, certifies that I have this 16th day of October 2012, served copies of the Motion for Rehearing upon counsel of record for the Respondent by causing them to be deposited in the United States mail, first class postage paid addressed to William C. McDow/Mason Summers, Plowden, Robinson, P.A., P.O. Drawer 7788, Columbia, SC 29202 and John Florence/John Bruton, Haynsworth Sinkler Boyd, P.A., P.O. Box 11889 Columbia, SC 29211-1889.

