

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
APR 23 2018
SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
R. Knox McMahon, Circuit Court Judge

Case No. 2016-CP-32-02419
Case No. 2016-CP-32-02397

Hawi Kebede, Mekilit A. Lemu and Schewangiz K. Moses ..Respondents,
v.
Amick Farms, LLC and OSI Group.....Appellants.

And
Tizezew Tadese..... Respondent,
v.
Amick Farms, LLC and OSI Group.....Appellants.

**RETURN OF APPELLANTS AMICK FARMS, LLC AND OSI GROUP TO
RESPONDENTS' MOTION TO DISMISS APPEAL**

Pursuant to Rule 240, SCACR, Appellants Amick Farms, LLC and OSI Group (together, "Amick Farms") respond to Respondents' Hawi Kebede, Meilit A. Lemu, Shewangiz K. Moses, and Tizezew Tadese's (collectively, "the Temporary Workers") Motion to Dismiss Amick Farms' appeal in this consolidated matter.

INTRODUCTION

To be sure, an order denying a Rule 12(b)(1), SCRCF motion is generally not immediately appealable. However, the two orders appealed from in this appeal (the "Orders")¹

¹ The Orders are substantively identical and are attached hereto as Exhibits A and B.

go far beyond denying Amick Farms' motions to dismiss. Instead—and completely left unaddressed by the Temporary Workers—the Orders ruled that Amick Farms is judicially estopped from asserting its core defenses to the Temporary Workers' Complaints: the statutory employer defense enacted in the South Carolina Workers' Compensation Act (the "Act") and lack of subject matter jurisdiction due to the Act's exclusivity provision.

Specifically, the Circuit Court ruled that "[Amick Farms is] judicially estopped from asserting that they are the employer of [the Temporary Workers], statutory or otherwise," and "[t]his Court will not allow [Amick Farms] to change their position regarding [the Temporary Workers'] employment in an effort to avoid liability." Exs. A at p. 5, B at p. 5. The Circuit Court thus forever foreclosed Amick Farms from asserting its core defenses in these actions.

The *actual holdings* of the Orders—not just what their titles say—demonstrate that they are appealable at this juncture. The Orders affect a substantial right by affirmatively and finally ruling that judicial estoppel bars Amick Farms from asserting its core defenses of statutory employment and workers' compensation exclusivity. Thus, as discussed in detail below, this Court should deny the Motion to Dismiss Amick Farms' appeal.

BACKGROUND²

In July 2013, the Temporary Workers were directly employed by Employer Solutions Staffing Group, LLC ("ESSG"), a temporary staffing agency. Pursuant to a contract between ESSG and Amick Farms, the Temporary Workers were assigned as temporary workers at Amick Farms' chicken processing facility in Batesburg-Leesville, South Carolina. During their work shifts at Amick Farms, the Temporary Workers worked alongside Amick Farms' direct

² See generally Amick Farms' Initial Brief.

employees and performed the same tasks as Amick Farms' direct employees. The Temporary Workers were allegedly injured in a vehicle accident as they were being transported home from work in an ESSG-owned van by fellow ESSG-direct employee, Rahmel York. Like the Temporary Workers, York had also been assigned by ESSG to work on the processing lines at Amick Farms.

The Temporary Workers sought and received workers' compensation benefits from ESSG. After receiving their workers' compensation benefits awards, the Temporary Workers then brought the two nearly identical underlying lawsuits alleging negligent supervision and negligent entrustment against Amick Farms. They premised their claims on alleged actions or omissions regarding the working conditions at Amick Farms and whether York should have been driving the ESSG van after experiencing those working conditions.

Amick Farms moved in both actions to dismiss the Temporary Workers' claims against it pursuant to Rule 12(b)(1), SCRCP. Specifically, Amick Farms asserted that it was the Temporary Workers' statutory employer and, consequently, the Temporary Workers' claims in circuit court were barred by the unambiguous provisions of the Act. The Temporary Workers did not contest Amick Farms' motions on the substantive law of statutory employment under the Act. Instead, they argued that Amick Farms should be judicially estopped from asserting that the Temporary Workers were Amick Farms' statutory employees on the basis of prior proceedings before the Workers' Compensation Commission.

After briefing and a hearing, the Circuit Court entered the Orders denying Amick Farms' motions and ruling that Amick Farms is judicially estopped from asserting—and *cannot* assert in

these actions—its statutory employer and subject matter jurisdiction defenses. This appeal followed.

ARGUMENT

I. This Court Must Look To The Actual Relief Ordered By The Circuit Court In Assessing Whether The Subject Orders Are Appealable.

Although titled simply “Order” and ultimately denying Amick Farms’ Motions to Dismiss the two underlying Complaints pursuant to Rule 12(b)(1), SCRPC, neither of the Orders simply finds that the Temporary Workers have pled allegations sufficient to survive the Motions to Dismiss. Instead, the Orders weigh evidence and *affirmatively* and *finally* rule that judicial estoppel bars Amick Farms from raising its defenses of statutory employment and workers’ compensation exclusivity in these actions. These Orders, therefore, strike the portion of Amick Farms’ answers containing these core defenses as that concept is interpreted under S.C. Code Ann. § 14-3-330(2)(c).³ It is because these Orders “finally determine some substantial matter forming the whole or a part of” Amick Farms’ defenses that these Orders are immediately appealable. *See, e.g., Cooke v. Palmetto Health Alliance*, 367 S.C. 167, 174, 624 S.E.2d 439, 442 (Ct. App. 2005) (holding in an interlocutory appeal on subject matter jurisdiction, that “the circuit court weighed the evidence and concluded that the [workers’ compensation] exclusivity provision did not apply,” and that, thus, the Circuit Court “finally determined a substantial matter forming a part of the Hospital’s defense” and therefore, the order was appealable).

“[T]he question of whether an order is immediately appealable is determined on a case-by-case basis.” *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539,

³ *See also* S.C. Code Ann. § 14-8-200(a) (describing jurisdiction, authority, and standard of review of Court of Appeals as the same as the Supreme Court).

773 S.E.2d 144, 146 (2015). Appellate courts are directed to look at the *effect* of an order, not just its title. *Id.* at 539, 773 S.E.2d at 147 (“Our review of trial court orders is not constrained by how the order is styled.”). In undertaking this review:

An appellate court should look to the effect of an interlocutory order to determine its appealability under section 14-3-330(2)(c). An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial.

Thornton v. S.C. Elec. & Gas Corp., 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011).

The Temporary Workers ignore these legal principles and misunderstand the nature of the issues raised in this appeal.⁴ The Temporary Workers instead rely solely on the *general* rule that denials of Rule 12(b) motions are *generally* not immediately appealable. The Temporary Workers’ Motion pp. 3-4. But this general rule is not at issue here. Instead, the proper analysis requires this Court to undertake a thorough, analytical, and rigorous review of the subject Orders as they were entered and the effect that they have on the claims and defenses raised in these cases.

II. The Orders Strike Certain Of Amick Farms’ Affirmative Defenses And Are Thus Immediately Appealable.

An interlocutory order is immediately appealable if it “affect[s] a substantial right” when the order “strikes out an answer or any part thereof.” S.C. Code Ann. § 14-3-330(2)(c).

⁴ Amick Farms’ grounds for appeal pursuant to S.C. Code Ann. § 14-3-330 are clearly identified in its Notices of Appeal filed with this Court on December 19, 2017.

Affirmative defenses are required to be set forth in an answer. Rules 8(c), 12(b), SCRCP.⁵ Although the general rule is that denials of Rule 12(b)(1) motions are not immediately appealable, *Deskins v. Boltin*, 319 S.C. 356, 357, 461 S.E.2d 395, 396 (1995), interlocutory orders (like the Orders here) that delve into the merits of a case, strike portions of pleadings, remove a material issue from the case, or otherwise finally determine a substantial right may be appealable depending on the effect of the order. *Thornton*, 391 S.C. at 304, 705 S.E.2d at 479. Again, the Court must determine appealability on a case-by-case basis and look beyond the cursory labels or titles applied to an order. *Morrow*, 412 S.C. at 539, 773 S.E.2d at 147.

Here, as in *Cooke*, the Orders reach the full merits of, weigh evidence regarding, and ultimately strike Amick Farms' affirmative defenses. The Circuit Court did not simply rule that the Temporary Workers had pled facts sufficient to withstand a motion to dismiss. Rather, the Circuit Court ruled that: “[*Amick Farms*] actions meet the elements of judicial estoppel;” Amick Farms is “judicially estopped from asserting that they are the employer of [the Temporary Workers], statutory or otherwise;” and “[t]his Court will not allow [*Amick Farms*] to change their position regarding [the Temporary Workers'] employment in an effort to avoid liability.” See Ex. A, pp. 4-5, Ex. B, pp. 4-5 (emphasis added). The Circuit Court completely struck Amick Farms' statutory employee and exclusivity defenses on the merits and removed these core

⁵ In addition to filing its motions to dismiss under Rule 12(b)(1), Amick Farms also raised its subject matter jurisdiction and workers' compensation exclusivity defenses in its First Amended Answers. See Rule 12(b), SCRCP (“Every defense, in law or fact, to a cause of action in any pleading ... shall be asserted in the responsive pleading thereto if one is required, except that the [Rule 12(b)(1)-(8)] *defenses may at the option of the pleader be made by motion.*” (emphasis added)).

defenses from the cases altogether, finally deciding that Amick Farms “will not [be] allow[ed]” to raise its defenses at all.

An order striking defenses such as these is immediately appealable. See S.C. Code Ann. § 14-3-330(2)(c) (“An order affecting a substantial right made in an action when such order . . . (c) strikes out an answer or any part thereof or any pleading in any action.”); see also *Cooke*, 367 S.C. at 174, 624 S.E.2d at 442 (finding that because the trial court made a determination on the merits of the statutory employer defense, the appeal could proceed). Under similar circumstances, the South Carolina Supreme Court held that interlocutory appeals were permissible where the lower court ruled in the course of deciding a motion to amend “that *res judicata* did not operate as a bar against [defendant] in any way.” *Collins v. Sigmon*, 299 S.C. 464, 466, 385 S.E.2d 835, 836 (1989). In *Collins*, the Supreme Court noted that normally a ruling on a motion to amend is not appealable. However, “[b]ecause the parties at the motion hearing fully argued the *res judicata* issue [and] because the trial judge ruled as he did,” the ruling was properly appealable. *Id.* at 467, 385 S.E.2d at 837. It was because the trial judge’s order reached “the legal substance or merits of certain of [defendant’s] proposed counterclaims”—effectively striking them—that the interlocutory order was sufficiently final to be appealed. *Id.*

In these cases, the Orders similarly go beyond a determination that the Temporary Workers have made sufficient allegations to proceed beyond the motion to dismiss stage. Instead, the subject Orders forever foreclose Amick Farms’ core defenses by finally determining that judicial estoppel bars Amick Farms from raising them throughout the remainder of the

actions. Clearly, these Orders affect a substantial right as contemplated by S.C. Code Ann. § 14-3-330(2)(c).

CONCLUSION

The Court “shall review upon appeal” orders “affecting a substantial right made in an action when such order[s] ... strike[] out an answer or any part thereof or any pleading in any action.” S.C. Code Ann. § 14-3-330(2)(c). As argued above, the Orders here meet this standard. Therefore, the Temporary Workers’ Motion to Dismiss Amick Farms’ Appeal should be denied.

Respectfully submitted,

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Attorneys for Appellants

April 23, 2018

EXHIBIT A

The underlying case involves an automobile accident that occurred on July 8, 2013. The Plaintiffs were injured when the driver of their passenger van fell asleep behind the steering wheel and drove the van into an embankment. The Plaintiffs had worked an overnight shift at Amick Farms and were on their way home at the time of the accident. The Plaintiffs filed a Workers' Compensation claim against the Defendants and ESSG based on this incident. On May 12, 2015, the Defendants sent correspondence to the South Carolina Workers Compensation Commission ("the Commission") regarding the proper parties to the claim. In their letter, the Defendants stated "initially, there was some confusion about which employer was connected to which claimant, but we have now aligned the parties properly." The Defendants attached a Consent Order to their correspondence which provided that ESSG was the Plaintiffs' "sole employer" and that the Defendants should be dismissed from the Workers' Compensation claim. The Commission accepted the representations made by the Defendants and signed the Consent Order dismissing the Defendants. The Plaintiffs apparently resolved their Workers' Compensation claim with ESSG.


The Plaintiffs then filed the instant case against Defendants based on their failure to monitor and supervise Mr. York. In response to the Plaintiffs' allegations, the Defendants filed an Answer with corresponding affirmative defenses. The Defendants did not plead the affirmative defense of exclusivity based on the South Carolina Workers' Compensation Act ("the Act") in their original Answer. The Defendants subsequently amended their Answer and asserted this defense based on their new averment that they are the Plaintiffs' statutory employer. The Defendants then filed the current Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction. They now claim they are the statutory employer of the Plaintiffs and are immune from the Plaintiffs' lawsuit based on the exclusivity provision of the Act.

A handwritten signature in black ink, appearing to be a stylized 'M' or similar initials, located at the bottom right of the page.

LAW

Initially, the Court acknowledges generally that the South Carolina Workers' Compensation Act (the Act) provides the legal framework to compensate employees who are injured in accidents arising out of and in the course of their employment. Parker v. Williams and Madjanik, Inc., 275 S.C. 65, 71 (1980). The Act, and thus the Workers' Compensation forum, provides the exclusive remedy against an employer for an employee's work-related accident or injury. Fuller v. Blanchard, 358 S.C. 536, 595 S.E.2d 831, 833 (2004). More specifically, the exclusivity provision of the Act prevents an employee from maintaining a tort action against an employer where the employee sustains a work-related injury. Edens v. Bellini, 359 S.C. 433, 441–43, 597 S.E.2d 863, 867–68 (Ct. App. 2004). This exclusivity provision also extends to workers not directly employed by the Defendant if the worker can be classified as a statutory employee. Edens, 359 S.C. at 445, 597 S.E.2d at 869. A worker is a statutory employee if the activity he performed for the owner satisfies one of the following three (3) tests: (1) Is the activity an important part of the owner's business or trade; (2) Is the activity necessary, essential, and integral part of the owner's trade, business, or occupation; or (3) Has the identical activity previously been performed by the owner's employees. See Riden v. Kemet Elecs. Corp., 313 S.C. 261, 263-264, 437 S.E.2d 156, 157-158 (Ct. App. 1993).

South Carolina also recognizes the doctrine of judicial estoppel. See Hayne Federal Credit Union v. Bailey, 327 S.C. 242 (1997). The doctrine precludes a party from adopting a position in conflict with one previously taken in the same or related litigation. See Quinn v. Sharon Corp., 343 S.C. 411, 414, 540 S.E.2d 474, 476 (2000). A party cannot assert one set of facts in litigation and then change those facts in subsequent litigation "when the initial version no longer suits him." Hayne, 327 S.C. at 252. Judicial estoppel may be properly applied to prevent a party from asserting



a legal position regarding their employment relationship with another when that position contradicts the legal position they previously asserted regarding their employment status. *See Allen v. Zurich Ins., Co.*, 667 F.2d 1162 (4th Cir. 1982). This is because the purpose of the doctrine is to protect the integrity of the judicial process and the courts. *Quinn*, 343 S.C. at 414, 540 S.E.2d at 475. The doctrine punishes those who take the truth-seeking function of the system lightly. *Hayne*, 327 S.C. at 252. Judicial estoppel is an equitable concept and the application of the doctrine is discretionary. *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31 (2003).

To determine the applicability of judicial estoppel, South Carolina courts analyze the following five elements:

1. two inconsistent positions must be taken by the same party or parties in privity with each other;
2. the two inconsistent positions were both made pursuant to sworn statements;
3. the positions must be taken in the same or related proceedings involving the same parties in privity with each other;
4. the inconsistency must be part of an intentional effort to mislead the court; and
5. the two positions must be totally inconsistent; that is, the truth of one position must necessarily preclude the veracity of the other position.

See Cothran v. Brown, 357 S.C. 210, 214, 592 S.E.2d 629, 632 (2004).

This Court finds that the Defendants' actions meet the elements of judicial estoppel set forth in *Cothran*. The Defendants represented to the Workers' Compensation Commission that ESSG was the "sole employer" of the workers. According to the Defendants, this representation was made based on the contract which stated that ESSG was the sole employer of the Plaintiffs and that "under no circumstances" would the Defendants ever be deemed the employer of the Plaintiffs. This representation meets all five of the elements of judicial estoppel as the Defendants now claim they are the employer of the workers. The representation was:



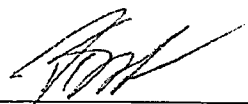
1. Inconsistent with their current position;
2. Made in the form of a Consent Order which was sworn to by the Defendants;
3. Made during related proceedings with the same parties and the same facts;
4. Submitted as part of the Defendants' plan to either mislead the Commission or this Court regarding the employment status of the workers;
5. Totally inconsistent with their current claim that they are the Plaintiffs' employer.

CONCLUSION

The Court finds these Defendants are judicially estopped from asserting that they are the employer of the Plaintiffs, statutory or otherwise, based on their prior assertions to the contrary. The Defendants represented that ESSG is the sole employer of the Plaintiffs to suit their needs in the Workers' Compensation forum. Now, they assert that they are the employer of the Plaintiffs in this forum to avoid liability. This Court will not allow the Defendants to change their position regarding the Plaintiffs' employment in an effort to avoid liability.

WHEREFORE, the Defendants' Motion to Dismiss the Plaintiffs' Complaint under the exclusive remedy provisions of the South Carolina Workers' Compensation Act is DENIED.

It is so Ordered.



The Honorable R. Knox McMahon
Circuit Court Judge

This 28 day of August, 2017
Lexington County, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF LEXINGTON)
)
Hawi Kebede, Mekilit A. Lemu, and)
Shewangiz K. Moses,)
)
)
Plaintiffs,)
v.)
)
Amick Farms, LLC and OSI Group,)
)
)
Defendants.)
)
_____)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO. 2016-CP-32-02419

ORDER

This matter came before the Court for a hearing on August 2, 2017. The Defendants filed a Motion to Dismiss the Plaintiffs' Complaint pursuant to Rule 12(b)(1), SCRPC. Representing the Plaintiff was Cooper Wilson, Esquire. Representing the Defendants was Roopal Ruparelia, Esquire. For the following reasons, Defendants' Motion is hereby DENIED.

The Defendants Amick Farms, LLC and OSI Group (collectively "Amick Farms") own and operate a chicken plant that produces a line of chicken products for their foodservice, industrial, and retail customers. In 2013, Amick Farms entered into a contract with Employer Solutions Staffing Group ("ESSG"), a temporary staffing company. The contract stated that ESSG would provide "supplemental labor" to Amick Farms for use at their chicken plant. The Plaintiffs are refugees from Ethiopia who were hired by ESSG to perform supplemental labor at Amick Farms under the terms set forth in the contract.

The contract stated that the employees of ESSG – to include the Plaintiffs – "are and will be employed solely by [ESSG]." The contract also stated "under no circumstances shall an employee of [ESSG] or its subcontractors be deemed or construed to be an employee of Amick Farms."



The underlying case involves an automobile accident that occurred on July 8, 2013. The Plaintiffs were injured when the driver of their passenger van fell asleep behind the steering wheel and drove the van into an embankment. The Plaintiffs had worked an overnight shift at Amick Farms and were on their way home at the time of the accident. The Plaintiffs filed a Workers' Compensation claim against the Defendants and ESSG based on this incident. On May 12, 2015, the Defendants sent correspondence to the South Carolina Workers Compensation Commission ("the Commission") regarding the proper parties to the claim. In their letter, the Defendants stated "initially, there was some confusion about which employer was connected to which claimant, but we have now aligned the parties properly." The Defendants attached a Consent Order to their correspondence which provided that ESSG was the Plaintiffs' "sole employer" and that the Defendants should be dismissed from the Workers' Compensation claim. The Commission accepted the representations made by the Defendants and signed the Consent Order dismissing the Defendants. The Plaintiffs apparently resolved their Workers' Compensation claim with ESSG.

The Plaintiffs then filed the instant case against Defendants based on their failure to monitor and supervise Mr. York. In response to the Plaintiffs' allegations, the Defendants filed an Answer with corresponding affirmative defenses. The Defendants did not plead the affirmative defense of exclusivity based on the South Carolina Workers' Compensation Act ("the Act") in their original Answer. The Defendants subsequently amended their Answer and asserted this defense based on their new averment that they are the Plaintiffs' statutory employer. The Defendants then filed the current Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction. They now claim they are the statutory employer of the Plaintiffs and are immune from the Plaintiffs' lawsuit based on the exclusivity provision of the Act.



LAW

Initially, the Court acknowledges generally that the South Carolina Workers' Compensation Act (the Act) provides the legal framework to compensate employees who are injured in accidents arising out of and in the course of their employment. Parker v. Williams and Madjanik, Inc., 275 S.C. 65, 71 (1980). The Act, and thus the Workers' Compensation forum, provides the exclusive remedy against an employer for an employee's work-related accident or injury. Fuller v. Blanchard, 358 S.C. 536, 595 S.E.2d 831, 833 (2004). More specifically, the exclusivity provision of the Act prevents an employee from maintaining a tort action against an employer where the employee sustains a work-related injury. Edens v. Bellini, 359 S.C. 433, 441–43, 597 S.E.2d 863, 867–68 (Ct. App. 2004). This exclusivity provision also extends to workers not directly employed by the Defendant if the worker can be classified as a statutory employee. Edens, 359 S.C. at 445, 597 S.E.2d at 869. A worker is a statutory employee if the activity he performed for the owner satisfies one of the following three (3) tests: (1) Is the activity an important part of the owner's business or trade; (2) Is the activity necessary, essential, and integral part of the owner's trade, business, or occupation; or (3) Has the identical activity previously been performed by the owner's employees. See Riden v. Kemet Elecs. Corp., 313 S.C. 261, 263-264, 437 S.E.2d 156, 157-158 (Ct. App. 1993).

South Carolina also recognizes the doctrine of judicial estoppel. See Hayne Federal Credit Union v. Bailey, 327 S.C. 242 (1997). The doctrine precludes a party from adopting a position in conflict with one previously taken in the same or related litigation. See Quinn v. Sharon Corp., 343 S.C. 411, 414, 540 S.E.2d 474, 476 (2000). A party cannot assert one set of facts in litigation and then change those facts in subsequent litigation "when the initial version no longer suits him." Hayne, 327 S.C. at 252. Judicial estoppel may be properly applied to prevent a party from asserting



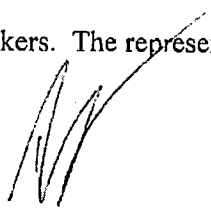
a legal position regarding their employment relationship with another when that position contradicts the legal position they previously asserted regarding their employment status. See Allen v. Zurich Ins. Co., 667 F.2d 1162 (4th Cir. 1982). This is because the purpose of the doctrine is to protect the integrity of the judicial process and the courts. Quinn, 343 S.C. at 414, 540 S.E.2d at 475. The doctrine punishes those who take the truth-seeking function of the system lightly. Hayne, 327 S.C. at 252. Judicial estoppel is an equitable concept and the application of the doctrine is discretionary. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31 (2003).

To determine the applicability of judicial estoppel, South Carolina courts analyze the following five elements:

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See Cothran v. Brown, 357 S.C. 210, 214, 592 S.E.2d 629, 632 (2004).

This Court finds that the Defendants' actions meet the elements of judicial estoppel set forth in Cothran. The Defendants represented to the Workers' Compensation Commission that ESSG was the "sole employer" of the workers. According to the Defendants, this representation was made based on the contract which stated that ESSG was the sole employer of the Plaintiffs and that "under no circumstances" would the Defendants ever be deemed the employer of the Plaintiffs. This representation meets all five of the elements of judicial estoppel as the Defendants now claim they are the employer of the workers. The representation was:



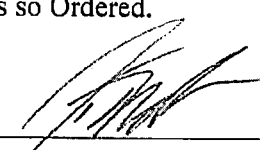
1. Inconsistent with their current position;
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5. Totally inconsistent with their current claim that they are the Plaintiffs' employer.

CONCLUSION

The Court finds these Defendants are judicially estopped from asserting that they are the employer of the Plaintiffs, statutory or otherwise, based on their prior assertions to the contrary. The Defendants represent that ESSG is the sole employer of the Plaintiffs to suit their needs in the Workers' Compensation forum. Now, they assert that they are the employer of the Plaintiffs in this forum to avoid liability. This Court will not allow the Defendants to change their position regarding the Plaintiffs' employment in an effort to avoid liability.

WHEREFORE, the Defendants' Motion to Dismiss the Plaintiffs' Complaint under the exclusive remedy provisions of the South Carolina Workers' Compensation Act is DENIED.

It is so Ordered.



The Honorable R. Knox McMahon
Circuit Court Judge

This 28 day of August, 2017
Lexington County, South Carolina

THE STATE OF SOUTH CAROLINA
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Appellate Case No. 2017-002573

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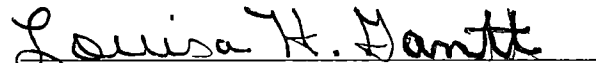
PROOF OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 23rd day of April, 2018, caused the forgoing Return of Appellants Amick Farms, LLC and OSI Group to Respondents' Motion to Dismiss Appeal to be served via U.S. mail, postage prepaid, on counsel of record at the addresses shown below:

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Attorney for Respondents


Louisa H. Gantt

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Haynsworth
Sinkler Boyd, P.A.

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April 23, 2018

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *Hawi Kebede et al v. Amick Farms, LLC et al*
C.A. No.: 2016-CP-32-02419
Tizezew Tadese v. Amick Farms, LLC et al
C.A. No.: 2016-CP-32-02397
Consolidated Appellate Case No. 2017-002573
HSB File No.: 03019.7005

RECEIVED
APR 23 2018
SC Court of Appeals

Dear Ms. Kitchings:

Enclosed herewith for filing is an original and seven (7) copies of the Return of Appellants Amick Farms, LLC and OSI Group to Respondents' Motion to Dismiss Appeal regarding the above-referenced case together with a Proof of Service. Please file the original and six copies and return one clocked copy to me via my courier.

Thank you for your assistance.

Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.



Elizabeth H. Black

EHB/lhg

Enclosure

cc: Garryl L. Deas
H. Cooper Wilson, III
Steven H. Gistenson
Michael F. Derksen

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