

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

Case No. 2017-CP-10-5140

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SC Court of Appeals

JOHN DANIEL MEYERS, JR.....Respondent,

v.

TRIPLE STAR, LLC, d/b/a STARS ROOFTOP
BAR AND GRILL ROOM,Appellant.

RESPONDENT'S MOTION TO DISMISS



Trip Riesen (S.C. Bar #: 71084)
RIESEN DURANT, LLC
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Mount Pleasant, South Carolina 29464
843.800.0808
Attorney for Respondent

Dated: January 9, 2019

OTHER COUNSEL OF RECORD:

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Attorney for Defendant Motivated Marketing, LLC

This motion is filed pursuant to Rule 240 of the South Carolina Appellate Court Rules. Through this motion, the respondent requests that the Court dismiss this appeal because the appealed order is an interlocutory order that is not immediately appealable.

BACKGROUND

John Daniel Meyers (Respondent) was hired as an independent contractor with Clarmac LLC d/b/a Zanshin Management (“Zanshin”) to provide crowd control and security to establishments in the Charleston area. Triple Star LLC d/b/a Stars Rooftop Bar and Grill Room (Appellant) subcontracted with Zanshin to provide crowd control at its restaurant primarily on weekends. On December 12, 2015, Plaintiff fractured his patella after an altercation with an intoxicated patron, while working at appellant’s restaurant. Respondent sued appellant under negligence and dram shop theories alleging appellant knowingly served an intoxicated patron.

Appellant filed a Rule 12(b)(1) SCRCR motion to dismiss alleging respondent was their statutory employee and therefore the court lacked subject matter jurisdiction to hear respondent’s tort action because his exclusive remedy is under the Workers’ Compensation Act.

On November 25, 2018, the matter was heard before the Honorable Edward W. Miller. On December 5, 2018, Judge Miller issued an Order denying appellant’s motion to dismiss. Appellant now appeals the court’s order.¹

ARGUMENT

Appellant’s appeal of the Circuit Court’s Order denying their Rule 12(b)(1) motion to dismiss under the exclusive remedy provisions of the South Carolina Workers’

¹ See Judge Miller’s Order included with Appellant’s Notice of Appeal.

Compensation Act is not immediately appealable and, accordingly, should be dismissed. *Deskins v. Boltin*, 319 S.C. 356, 357, 461 S.E.2d 395, (holding an order denying a motion to dismiss based on the exclusivity provision of the Workers' Compensation Act was not immediately appealable); *Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E.2d 392 (1995) (holding an order denying a Rule 12b1 motion to dismiss alleging the statutory employee exclusivity defense is not immediately appealable) overruled on other grounds by *Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002); *McLendon v. South Carolina Dep't of Highways and Pub. Transp.*, 313 S.C. 525, 443 S.E.2d 539 (1994) (holding the denial of a motion to dismiss, like the denial of a motion for summary judgment, does not establish the law of the case and the issue raised by the motion can be raised again at a later state in the proceedings.

CONCLUSION

Because the order denying appellant's motion to dismiss is not immediately appealable, the Court should dismiss this appeal.

Respectfully submitted,



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TRIPLE STAR, LLC, d/b/a STARS ROOFTOP
BAR AND GRILL ROOM,Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Dismiss upon all counsel of record by depositing a copy of same in the United States Mail, First Class postage prepaid, on January 9, 2019, addressed to all attorneys of record, addressed as follows:

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Dated: January 9, 2019



RIESEN | DURANT LLC
ATTORNEYS AT LAW

FRED "TRIP" W. RIESEN, III (SC, CA)
FRED W. RIESEN, JR

G. RUTLEDGE DURANT
RHAME "CHIP" B. CANNON, JR

January 9, 2019

VIA US FIRST CLASS MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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Re: **John Daniel Meyers, Jr. v. Triple Star, LLC, et al**
In the Charleston County Court of Common Pleas
Case No. 2017-CP-10-5140

SC Court of Appeals

Dear Ms. Kitchings,

With regards to the above referenced matter, please find enclosed for filing the following:

1. Respondent's Motion to Dismiss
2. Proof of Service of the Motion to Dismiss
3. This firm's check in the amount of \$50.00 for the filing fee; and
4. A copy of our correspondence to the Charleston County Clerk of Court.

I have also included an extra copy of the Motion to Dismiss with Proof of Service and would appreciate your returning these filed copies to our office in the enclosed self-addressed stamped envelope.

Please note as the Notice of Appeal was filed yesterday, January 8, 2019, there has not been an appellant case number assigned as of this date.

Thank you for your assistance in this matter. If you have any questions or concerns, please do not hesitate to contact me.

Very Truly Yours,


Trip Riesen

Enclosures as stated

cc: The Honorable Edward W. Miller
The Honorable Julie J. Armstrong – Charleston County Clerk of Court
Joseph D. Thompson, III, Esq.
Elizabeth F. Fulton, Esq.
Christopher Nickels, Esq.
Edward K. Pritchard, III, Esq.



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