

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DARLINGTON )  
 )  
James Roosevelt Gee, )  
 )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Hartsville. LLC d/b/a Carolina )  
Pines Medical Center, )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTH JUDICIAL CIRCUIT  
2018-CP-16-00696

**ORDER DENYING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

**RECEIVED**  
**SEP 17 2020**  
**SC Court of Appeals**

On November 14, 2019, this matter cam before the Court for the purpose of hearing Defendant's Motion for Summary Judgment. After oral argument and review of the pleadings and supporting memoranda of law of both parties in this case, I issue the following Order:

**STATEMENT OF FACTS:**

On or about January 11, 2016, the Plaintiff was working as an unarmed security guard for Security Management of South Carolina, LLC. Plaintiff was assigned to work their site at Carolina Pines in Hartsville, South Carolina. A Sheriff Deputy for Darlington County brought a violent criminal suspect in handcuff for a psychiatric evaluation. After a period of time, the Deputy stated he could not wait any longer. The Deputy then proceeded to remove the patient's handcuff and left the premise. Shortly after the officer left, the patient/suspect became agitated, took a knife out of his pocket and attacked Plaintiff with said knife. As the result of this violent attack, Plaintiff received multiple stab wounds and laceration all over his body. Plaintiff's left arm was so severely damaged that he lost partial use of it and my hand. Plaintiff brought this action against Defendant based on several cause of actions of Negligence/Gross-Negligence, Negligent Hiring/Retention, Negligent Supervision/Training and Negligent.

Defendant in its Motion for Summary Judgment argues that Plaintiff is Defendant's statutory employee and therefore is barred from any additional recovery from this Defendant due to the exclusive remedy clauses under the South Carolina Worker's Compensation Act, S.C. Code Ann. §§ 42-1-10 to 42-19-50. Furthermore, Defendant asserts that as matter of law it does not a duty to the Plaintiff and thereby Defendant shall be entitled to a judgment as matter of law.

The Plaintiff in his response to this motion argues that the Plaintiff is not a statutory employee of the Defendant and that there are genuine issues as to material facts, and the moving party is not entitled to a Judgment as a matter of law.

**I. IS THE PLAINTIFF A STATUTORY EMPLOYEE OF THE DEFENDANT?**

In South Carolina, "[D]etermination of the employer-employee relationship for workers' compensation purposes is jurisdictional. Consequently, the Court has the power and duty to review the entire record and decide the jurisdictional facts in accord with the preponderance of the evidence." Poch v. Bayshore Concrete Prod./S.C., Inc. , 405 S.C. 359, 367, 747 S.E.2d 757, 761 (2013)

The statutory employee doctrine converts non-employees into employees for purposes of the Workers' Compensation Act. Indeed, "The rationale is to prevent owners and contractors from subcontracting out their work to avoid liability for injuries incurred in the course of employment." Keene v. CAN Holdings, LLC, 426 S.C. 357 (S.C. App., 2019). However, S.C. Code § 42-1-400 created the concept of a statutory employee:

When any person, in this section and sections 42-1-420 and 42-1-430 referred to as "owner," undertakes to perform or execute any work which is *a part of his trade, business[,] or occupation* and contracts with any other person (in this section and Sections 42-1-420 to 42-1-450 referred to as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this title [that] he would have been

liable to pay if the workman had been immediately employed by him. S.C. Code Ann. § 42-1-400 (2015) (emphasis added)

Pursuant to S.C. Code § 42-1-540, the exclusive remedy for an injured statutory employee is the Workers' Compensation Act. Therefore, even if a business organization does not have a direct employment relationship with a worker, the Workers' Compensation Act limits the worker to its provisions as the exclusive remedy for injuries he received while engaged in activity considered part of the organization's trade, business, or occupation.

However, South Carolina Courts have traditionally applied three tests in determining whether a worker is engaged in activity that is part of the organization's trade, business, or occupation: (1) the activity is an important part of the organization's business or trade; (2) the activity is a necessary, essential, and integral part of the organization's business; or (3) the activity has previously been performed by the organization's employees. Olmstead v. Shakespeare , 354 S.C. 421, 424, 581 S.E.2d 483, 485 (2003) (emphases added) The South Carolina Supreme Court has also acknowledged that "Since no easily applied formula can be laid down for determining whether work in a particular case meets these tests , each case must be decided on its own facts." Id. (emphasis added)

The South Carolina Supreme Court further determined that the question as to whether a person must be considered a statutory employee centers around "the guidepost as to whether or not that which is being done is or is not a part of the general trade, business [,] or occupation of the owner." Olmstead v. Shakespeare, 354 S.C. 421, 424, 581 S.E.2d 483, 485 (2003). However, the Court has also established that "simply asserting than an activity is part of the owner's trade, business or occupation does not make it so". Poch v. Bayshore Concrete Prod./S.C., Inc., 405 S.C. 359, 367, 747 S.E.2d 757, 761 (2013). The South Carolina Supreme Court further ruled that while a mere activity may be perceived has important to, or necessary for the Defendant's operation it is

not necessarily part of the Defendant's operation. See Keene v. CAN Holdings, LLC, 426 S.C. 357 (S.C. App., 2019) and Olmstead v. Shakespeare , 354 S.C. 421, 424, 581 S.E.2d 483, 485 (2003). Finally, South Carolina courts have held that "[e]mployees who work for the subcontractor but are not employed to do the work that the owner would normally do would not have a statutory employment relationship with the owner." Harrell v. Pineland Plantation, Ltd. , 337 S.C. 313, 323, 523 S.E.2d 766, 771 (1999).

In the present case, I find that it is undisputed that Defendant operates as a hospital, whose primary and sole mission is to provide healthcare. The Defendant in this case is not engaged in the business of providing security. Defendant also contracted an independent contractor to furnish security on its premises. Plaintiff was an employee of that independent contractor.

In South Carolina, private security providers and their employees must be licensed and certified by SLED as required under S.C. Code §40-18-20 et seq. and S.C. Ann. Regs. 73-400 et seq. (2006). Defendant in any event is not established, licensed or certified to perform or provide any security services as required by S.C. Code §40-18-20 et seq. and S.C. Ann. Regs. 73-400 et seq. (2006). Defendant's employees, through their employment with Defendant, are not required to train, qualify and maintain licenses as required by the laws of this state and SLED pursuant to S.C. Code §40-18-20 et seq. and S.C. Ann. Regs. 73-400 et seq. (2006).

Additionally, I find that the activity of providing security is not a service that is an actual part of the Defendant's business or operation. Hospitals, such as the Defendant, are not statutorily required to have security on its premises. It is apparent that Defendant's operation would not necessarily shut down if all of the security guards were not to show up to work on its premises; however, Defendant's operation would shut down if no nurse or doctor were present. Defendant also does not charge for any security services nor advertise as providing any security services.

Therefore, it appears that the service provided by Plaintiff may be perceived as important to, or necessary for the Defendant's operation, it is not actual part of the Defendant's operation, as required under Keene v. CAN Holdings, LLC, 426 S.C. 357 (S.C. App., 2019) and Olmstead v. Shakespeare, 354 S.C. 421, 424, 581 S.E.2d 483, 485 (2003). Hence, I find that the Plaintiff cannot be considered a statutory employee of the Defendant and therefore the Plaintiff is not barred from any additional recovery from this Defendant due to the exclusive remedy clauses under the South Carolina Worker's Compensation Act, S.C. Code Ann. §§ 42-1-10 to 42-19-50.

**II. WHETHER DEFENDANT IS ENTITLED TO A JUDGMENT AS A MATTER OF LAW**

Under South Carolina Rule of Civil Procedure Rule 56, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005) Furthermore, in reviewing all ambiguities, conclusions, and inferences arising in and from the evidence, the court must construct them in a light most favorable to the non-moving party below. Willis v. Wu, 362 S.C. 146, 150-51, 607 S.E.2d 63, 65 (2004); see also, Schmidt v. Courtney, 357 S.C. 310, 316-17, 592 S.E.2d 326, 330 (Ct.App.2003) (stating all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party.)

The Defendant in this case has asked that all the cause of action in this case be dismissed as matter of law, however, I find that there are genuine issues as to material facts, and the Defendant is not entitled to a Judgment as a matter of law.

THEREFORE, based on the foregoing, the Defendant's Motion for Summary Judgment is denied.

AND IT IS SO ORDERED.

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**The Honorable Roger E. Henderson**  
**Presiding Judge**

Darlington, South Carolina

\_\_\_\_\_, 2019



Darlington Common Pleas

**Case Caption:** James Roosevelt Gee VS Hartsville LLC , defendant, et al

**Case Number:** 2018CP1600696

**Type:** Order/Summary Judgment

So Ordered

s/Roger E. Henderson 2754

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