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OCT 14 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

The Honorable Roger E. Henderson, Presiding Circuit Court Judge

Civil Action No. 2018-CP-16-00696
Appellate Case No.: 2020-001268

James Roosevelt Gee.....Respondent,
v.
Hartsville, LLC d/b/a Carolina Pines Medical
Center.....Appellant.

**RESPONDENT’S RETURN TO APPELLANT’S PETITION FOR REHEARING OR
MOTION FOR REINSTATEMENT**

Respondent James Roosevelt Gee through his undersigned counsel and pursuant to Rules 221 and 240, SCACR responds to Appellant’s Petition for Rehearing or Motion for Reinstatement as follow:

On or about September 15, 2020, Appellant filed a Notice of Appeal appealing the Order Denying Defendant’s Motion for Summary Judgment and the Order Denying Defendant’s Motion to Alter or Amend that were issued by the Honorable Roger E. Henderson. On September 23, 2020, this court entered an Order dismissing the appeal stating that Order of denying Motion for Summary Judgment are not immediately appealable pursuant to Ballenger v. Bowen, 313 S.C. 476, 443 S.E.2d 379 (1994). Appellant then served on Respondent the aforementioned Petition for Hearing or Motion for Reinstatement on or about October 5, 2020.

The South Carolina Supreme Court has expressly ruled that an Order denying Summary Judgment are not appealable, Ballenger v. Bowen, 313 S.C. 476, 443 S.E.2d 379 (1994). Indeed

the South Carolina Supreme Court, has held in Ballenger that:

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 since that defense may be raised again later in the proceedings. Therefore, an order denying a motion for summary judgment[313 S.C. 478] is not appealable.

The South Carolina Supreme Court further explained in Ballenger that:

The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to reconsider the summary judgment motion or by a motion for a directed verdict. Johnston v. Bowen, --- S.C. ----, 437 S.E.2d 45 (1993) (motion to reconsider); Weil v. Weil, 299 S.C. 84, 382 S.E.2d 471 (Ct.App.1989) (statement made while denying summary judgment is not the law of the case); PPG Industries v. Orangeburg Paint & Decorating Center, Inc., 297 S.C. 176, 375S.E.2d 331 (Ct.App.1988) (motion to reconsider); 21 C.J.S. Courts, § 149, p. 183 (1990)

Furthermore, this Court has held in Watson v. Underwood, 407 S.C. 443, 756 S.E.2d 155 (S.C. App. 2014) that a trial judge is not bound by a prior order of another judge denying summary judgment. In Watson, this Court also held citing Ballenger that it is unnecessary to make findings of facts and conclusions in denying motions for summary judgment. This Court further held in Watson that even if the circuit court was to make a conclusion of laws in the denial of the Motion for Summary Judgement, the moving party is not bound by the circuit court's conclusions of law as it can be raised again at trial.

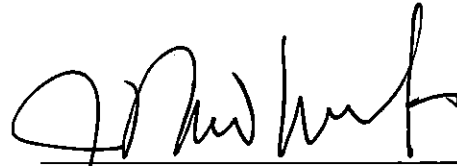
The Appellant in its Petition for Rehearing or Motion for Reinstatement heavily relies on Cooke v. Palmetto Health Alliance, 367 S.C. 167, 624 S. E.2d 439 (S.C. App. 2006); however, the present case differs greatly. In Cooke, the parties had consented to have a non-jury hearing on the merits of the defendant's exclusivity defense, therefore this court held based on this fact that the decision of the Court was final, hence appealable. This is not the case in the present matter before this court, the parties never agreed or consented to such non-jury hearing on the merits of the Appellant's exclusivity defense. Indeed in the present case, a motion hearing on

Appellant's Motion for Summary Judgment was held, unlike in Cooke. Furthermore, pursuant to Watson and Ballenger, Appellant is not bound by the conclusion of laws elaborated in Judge Henderson's Orders as they cannot be construed as dispositive of the Appellant's exclusivity defense. Appellant continues to have the option to present and raise this defense at the trial of this case. Hence the precedent established in Cooke does not apply in this case.

CONCLUSION

For the reasons stated herein, Respondent respectfully requests that the Court denies Appellant Petition for Rehearing or Motion to Reinstate.

Respectfully submitted by,



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Attorney for the Respondent

October 6, 2020

Other Counsel on Record:

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James Roosevelt Gee.....Respondent,
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Center.....Appellant.

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 9th day of October 2020. I served the foregoing Respondent's Return to Appellant's Petition for Rehearing or Motion to Reinstate as well as this Proof of Service in this matter by delivering a true copy of it in the United States Mail, postage prepaid, on October 9th, 2020, address to the following as indicated below:

Weldon R. Johnson, S.C. Bar No. 3061
Matthew G. Gerrald, S.C. Bar No 76236
Emily Collins Brown, S.C. Bar No. 100030
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J. David Weeks

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October 9, 2020

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

RE: James Roosevelt Gee v. Hartsville, LLC D/B/A Carolina Pines Medical Center
Case No: 2018-CP-16-0696
Appellate Case No. 2020-001268

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the Respondent's Return to Appellant's Petition For Rehearing or Motion For Reinstatement and the Proof of Service in the above-referenced matter. Please file the original and return a clocked-in copy in the stamped self-addressed envelope provided.

By copy of this letter to the Appellant's attorney's, I am serving them a copy of the same.

With my kindest regards,

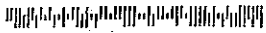
Sincerely,


J. David Weeks

JDW/cc

Enclosures-as stated.

cc: Weldon R. Johnson, Esquire
Matthew G. Gerrald, Esquire
Emily Collins Brown, Esquire



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