

**FOURTH DIVISION
MCFADDEN, P. J.,
WATKINS and EPPS, JJ.**

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October 19, 2026

In the Court of Appeals of Georgia

**A26A1413. BSC REALTY SERVICES, LLC v. VALCOURT
BUILDING SERVICES OF GEORGIA, L.C.**

MCFADDEN, Presiding Judge.

This appeal concerns Valcourt Building Services of Georgia, L. C.'s contractual obligation to indemnify BSC Realty Services, LLC for liability arising from injuries sustained by Sergio Orellana. Working on behalf of Valcourt, Orellana was pressure washing a cooling fan atop a commercial building managed by BSC. He fell from a ladder.

Under the terms of the indemnification provision, Valcourt must indemnify BSC unless liability for Orellana's injuries arose from the sole negligence of either BSC or the building owner. Because fact questions exist as to that issue, the trial court erred in granting summary judgment to Valcourt on BSC's third-party claims for

breach of contract and indemnification, so we reverse. We also hold that there is no merit to Valcourt's argument that we must dismiss this appeal for lack of jurisdiction.

1. Procedural overview

Orellana brought an action against several defendants, including building manager BSC, seeking damages for injuries he sustained when he fell. He alleged that the defendants were negligent for failing either to disable power to the fan or to take steps to prevent it from being re-energized while he was working, and that as a result the fan blade rotated and knocked him off the ladder.

BSC then brought a third-party action against Valcourt, a contractor providing exterior maintenance services to the building, which had contracted with a company owned by Orellana for some of those services, including pressure washing the cooling fan. BSC asserted claims against Valcourt for breach of contract and indemnification based on an indemnification provision in Valcourt's service agreement with the building's owner. Valcourt moved for summary judgment against the third-party claims, asserting that as a matter of law the indemnification provision did not apply because any liability for Orellana's injuries arose from the sole negligence of either

BSC or the building owner, specifically the failure of the building's engineers to take steps to ensure that power to the fan remained cut off while Orellana was washing it.

The trial court granted summary judgment to Valcourt on the third-party claims on July 28, 2025, and on August 7, 2025, the trial court issued an order directing the entry of a final judgment on those claims. BSC did not file a timely notice of appeal, but in September 2025 it moved for the trial court to vacate and reenter those orders. The trial court granted BSC's motion and, on November 10, 2025, vacated and reentered both orders. BSC then timely appealed.

2. Appellate jurisdiction

As an initial matter, Valcourt challenges our appellate jurisdiction. It contends that we lack jurisdiction because BSC did not timely appeal from the July 28, 2025 summary judgment order and the trial court lacked jurisdiction to vacate and reenter that order on November 10, 2025, outside the term of court in which the earlier order was entered. See OCGA § 15-6-3(20) (providing that the terms of court in Gwinnett County begin on the first Monday in March, June, and December and the second Monday in September). We disagree.

It is true that generally, “a trial court has no jurisdiction to change or modify a judgment outside the term of court in which the judgment was entered.” *Stevens v. Food Lion*, 341 Ga. App. 644, 646 (801 SE2d 340) (2017). But that rule applies only to final judgments. It “has no application to interlocutory rulings so long as the case continues — from term to term, until final judgment. In civil cases, an interlocutory ruling does not pass from the control of the court at the end of the term if the cause remains pending.” *Claxton v. Adams*, 357 Ga. App. 762, 765(1) (849 SE2d 494) (2020) (citation modified).

So although the July 2025 summary judgment order was “subject to review by direct appeal” under OCGA § 9-11-56(h), the case against the various defendants, including BSC, continued. Consequently the summary judgment order was interlocutory, and the November 2025 vacatur and reentry of that order was within the trial court’s authority.

The Civil Practice Act does authorize trial courts to “direct the entry of a final judgment” on a interlocutory order. OCGA § 9-11-54(b). But, “unless the court otherwise directs,” a final judgment is entered only upon “[t]he filing with the clerk

of a judgment, signed by the judge *with the fully completed civil case disposition form*[.]” OCGA § 9-11-58(b) (emphasis added).

Here, even though the trial court directed the entry of a final judgment as to the third-party claims under OCGA § 9-11-54(b), that judgment was not entered because, as Valcourt concedes, Valcourt did not file a civil case disposition form as to those claims. OCGA § 9-11-58(b) reiterates, “The entry of the judgment shall not be made by the clerk of the court until the civil case disposition form is filed.” *Id.*

Valcourt argues that it does not matter that no final judgment was entered under OCGA § 9-11-58(b), because the requirement of a civil case disposition form does not affect the finality of the trial court’s judgment for purposes of the Appellate Practice Act. See *Horesh v. DeKinder*, 295 Ga. App. 826, 829-30(1) (673 SE2d 311) (2009). It is true that we have held, “[w]hat additional requirements are imposed by the Civil Practice Act for entry of a judgment are simply not relevant for purposes of the Appellate Practice Act, *which has its own definition of when a judgment is entered.*” *GMC Group v. Harsco Corp.*, 293 Ga. App. 707, 708 (667 SE2d 916) (2008) (emphasis supplied). See OCGA § 5-6-31.

But the resolution of the dispositive jurisdictional issue in this case — the trial court’s authority to vacate and reenter the July 28 summary judgment order — implicates the Civil Practice Act rather than the Appellate Practice Act. Because no final judgment was entered on the third-party claims under OCGA § 9-11-58(b), for purposes of the Civil Practice Act the summary judgment order remained interlocutory and the trial court retained the authority to vacate and reenter it. See *Claxton*, 357 Ga. App. at 765(1). BSC timely initiated appellate proceedings from that reentered order, so we have jurisdiction over this appeal and we decline Valcourt’s request that we dismiss it.

3. Summary judgment

Turning to the merits of this appeal, summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law[.]” OCGA § 9-11-56(c). We review a grant of summary judgment de novo, viewing “the evidence, and all reasonable inferences drawn therefrom, in the light most favorable to the nonmovant.” *State of Ga. v. Federal Defender Program*, ___ Ga. ___, ___(3) (931 SE2d

123) (2026) (quotation marks omitted). To the extent that the trial court improperly made findings on disputed facts in the summary judgment order, as BSC contends, “[w]e do not rely on those disputed findings but, instead, review the record de novo[.]” Id. at ___(3) n. 8.

(a) *Facts*

Viewed in the light most favorable to BSC, the evidence shows that, as stated above, Valcourt entered into a contract with the owner of the commercial building at issue in this case to provide exterior maintenance services. The contract contained a provision under which Valcourt agreed to indemnify the building owner and the building manager, BSC, which stated, in relevant part:

INDEMNIFICATION – Contractor [Valcourt] shall indemnify and save harmless Manager [BSC] and Owner and their respective subsidiaries, affiliates, shareholders, directors, officers, partners and employees from and against any and all liability, claims and demands on account of damage to any property or injury to persons including death resulting therefrom, losses, damages, expenses (including attorneys’ fees and investigation costs), payments, recoveries and judgments in connection therewith arising out of or caused in any manner by the acts or omissions of Contractor, its employees, Managers or subcontractors or the performance or failure to perform any Services under this Contract or the breach of any provision or obligation set forth herein by Contractor,

or Contractor's employees or Managers or subcontractors *excepting only liability arising from the sole negligence of Owner or Manager*. Contractor shall, at its own expense, defend any and all actions brought against Manager or Owner based upon any of the foregoing and shall pay all attorneys' fees and all other expenses, and promptly discharge any judgments, settlements or compromises arising therefrom.

One of the services Valcourt agreed to perform under its contract with the building owner was to pressure wash the building's cooling tower fans. That work was performed by a separate entity owned by Orellana, International Maintenance Services, LLC, pursuant to a contract with Valcourt.

BSC takes several steps when a worker such as Orellana comes to the building to pressure wash the fans. Before the fans can be cleaned, the building's engineers (who work for an entity affiliated with BSC) must turn off the power to them. At the time of Orellana's fall, there were no written procedures for doing so. However, typically the following occurred: The person performing the cleaning would retrieve an access key from the engineers and let them know which tower would be cleaned. The engineers would shut power off to that tower, either through a computer system in the engineers' office (the building automation system) or by using a touchpad and

lever in a locked rooftop electrical room, and then inform the worker that this had occurred. Once the worker finished cleaning the tower, he would inform the engineers that power could be restored.

Federal Occupational Safety and Health Administration regulations establish standards for what is known as a “lockout/tagout” process to ensure that equipment, such as the cooling tower fans, is not unexpectedly re-energized while someone is servicing or maintaining it. See 29 CFR 1910.147. In this case, the building’s engineers could use a “lockout/tagout” process if they shut off the power to the cooling tower fans from the rooftop electrical room, but not if they turned off the power through the building automation system. Orellana’s expert witness testified that, by attempting to turn off the power only through the building automation system, the engineers did not properly de-energize the fan.

On the day of Orellana’s fall, October 7, 2021, Orellana arrived at the building, checked in with one of the engineers, obtained the access key, identified the first cooling tower fan he intended to wash, and received confirmation that power to that fan had been shut off. He washed the fan, informed the engineers that he had finished,

and received verification that the power had been shut off to the next fan he intended to wash, which was in another cooling tower.

Orellana went to that next cooling tower and watched the fan in it stop rotating. He climbed a ladder and held a fan blade with one hand to keep the fan still. He held the hose of the pressure washer with his other hand, keeping both of his feet on the ladder. Orellana began to pressure wash the fan. He then heard a “click” and the fan began to rotate again. This knocked Orellana off balance, and he fell off of the ladder. He was seriously injured in the fall.

The record does not contain direct evidence addressing whether or not the second cooling tower fan had been re-energized while Orellana was cleaning it. There is no testimony from the engineer who shut off the power to it. The building automation system logs for that day, which would have shown when the power was turned on and off, were not preserved.¹ Orellana testified that he believes power had

¹ The loss of these logs is the subject of a motion for spoliation sanctions that Orellana filed in the primary action. After the trial court granted summary judgment to Valcourt in the third-party action (but before the trial court vacated and re-entered that order), the trial court granted Orellana’s sanctions motion and stated that he likely would charge the jury in Orellana’s action on the spoliation presumption, see Suggested Pattern Jury Instructions (Civil) § 02.160 (5th ed. 2007), and would exclude testimony about what any person saw in the logs. The record before us contains deposition testimony from the person then serving as senior chief engineer

been restored to the fan. But the record also contains evidence both that the force of water from a pressure washer could cause the fan to rotate without power and that the fan makes little to no noise when it is re-energized. And Orellana's co-worker, who did not witness the fall but assisted Orellana on the scene shortly afterward, observed the fan blades moving slowly and slowing down.

(b) *Analysis*

BSC's third-party claims rest on Valcourt's obligation, under its contract with the building owner, to indemnify BSC for liability arising from Orellana's injuries. As detailed above, the contract excepts from that obligation "liability from the sole negligence of [the building owner] or [BSC]." In granting summary judgment to Valcourt, the trial court rejected BSC's argument that there is a question of fact as to whether or not the fan was re-energized during Orellana's work, or whether it moved on its own due to the force of the water. But as stated above, there was no direct evidence regarding whether or not the fan had power at the time Orellana fell. And we agree with BSC that the circumstantial evidence on that issue was not undisputed.

that he did not see anything unusual in the logs when he looked at them after Orellana fell. In our review of the record we have not found any deposition testimony more specifically addressing what anyone saw in the logs.

Circumstantial evidence is “evidence which does not constitute direct proof with regard to the issue of fact or the hypothesis sought to be proven by the evidence; rather, circumstantial evidence constitutes proof of other facts consistent with the hypothesis claimed.” *Patterson v. Kevon, LLC*, 304 Ga. 232, 236 (818 SE2d 575) (2018) (quotation marks omitted). It

may be sufficient for a plaintiff’s claim to survive summary judgment, if other theories are shown to be less probable. There is no requirement that other theories be conclusively excluded[.] In those circumstances, the question as to the sufficiency of the circumstantial evidence, and its consistency or inconsistency with alternative hypotheses, is a question for the jury.

Id. at 236 (citation modified).

The evidence that Orellana heard a “clicking” noise and then the fan began to rotate permits an inference that the fan was re-energized. But the evidence does not demand that inference, and other evidence contradicts the inference: the evidence that the fan makes little to no noise when the power is turned on, the evidence that the force of water from pressure washing can move the fan even if it does not have power, and the evidence that the fan began slowing down after Orellana’s fall.

A party opposing summary judgment, such as BSC, is entitled “to have all reasonable inferences from the evidence drawn in [its] favor.” *McBee v. Aspire at West Midtown Apts.*, 302 Ga. 662, 663(1) (807 SE2d 455) (2017). A jury could reasonably infer that the fan began to rotate because it was struck by water from Orellana’s pressure washer, rather than because it was re-energized partway through Orellana’s work. Although it is true, as Valcourt asserts, that “inferences cannot be based on mere conjecture or possibility or upon evidence which is too uncertain or speculative[,]” *Mannion & Mannion v. Mendez*, 355 Ga. App. 28, 31 (842 SE2d 334) (2020) (quotation marks omitted), we disagree that causation in this case is merely a matter of pure speculation or conjecture. As stated above, there is no direct evidence establishing whether or not the fan had been re-energized when Orellana fell, and the circumstantial evidence cited by BSC supports its theory that the rotation of the fan was caused by the force of the water from Orellana’s pressure washer, rather than the restoration of power to the fan. This is sufficient to create a factual dispute as to whether or not the fan had been re-energized. See *Patterson*, 304 Ga. at 236-37 (holding that summary judgment was not appropriate where there was no direct evidence on the dispositive issue and the party opposing summary judgment presented

evidence that, “although circumstantial, contradicted point by point the assertions made in [the movant’s] motion for summary judgment”); *Parke Towne N. Apts. v. Castro*, 349 Ga. App. 692, 696-97(4) (824 SE2d 730) (2019) (finding sufficient evidence of causation for plaintiff’s premises liability claim to survive summary judgment where there was no direct evidence showing why he fell but there was circumstantial evidence that he lost his balance and fell over a railing); *Miller v. Turner Broad. System*, 339 Ga. App. 638, 643(1) (794 SE2d 208) (2016) (finding sufficient evidence of causation for plaintiff’s premises liability claim to survive summary judgment where there was no direct evidence of whether or not the injured plaintiff knew a circuit had not been turned off when he tested it).

This factual dispute precludes summary judgment to Valcourt on the third-party claims. It goes to the issue of causation: whether Orellana’s injuries arose from the alleged negligence of the building’s engineers in failing to take steps to ensure that the fan was not re-energized during Orellana’s work. Because a dispute exists as to whether the fan in fact was re-energized, Valcourt cannot show, as a matter of law, that Orellana’s injuries arose from the sole negligence of BSC or the building owner, and thus the exception to the contract’s indemnification provision applies.

Given this conclusion, we do not reach BSC's argument that genuine issues of material fact exist regarding whether Orellana's injuries arose in part from negligence on the part of Valcourt with regard to the training provided to Orellana.

Judgment reversed. Watkins and Epps, JJ., concur.