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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Shaileshkumar Patel,

Plaintiff,

vs.

Florence Investment, LLC d/b/a Microtel
Inn & Suites and John Doe,
Defendants.

SC Court of Appeals

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-21-02414

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

The instant matter came before me on May 11, 2022, for a hearing on the Motion for Summary Judgment of Defendant Florence Investment, LLC d/b/a Microtel Inn & Suites (hereinafter "Defendant"). Having considered the arguments of counsel, their pleadings, memoranda, exhibits and other submissions filed with the Court, and for the following reasons and based upon the following law, Defendant's Motion for Summary Judgment is GRANTED. The Court finds that Plaintiff's tort claims against Florence Investment, LLC d/b/a Microtel Inn & Suites are barred by the exclusivity provision of the South Carolina Workers' Compensation Act.

FACTUAL AND PROCEDURAL BACKGROUND

Viewing the evidence and inferences therefrom in a light most favorable to the nonmovant, the Court makes the following findings of fact.

This case arises out of an assault that occurred on October 23, 2017, in the parking lot of a hotel operated by the Defendant on premises located at 1912 Enterprise Drive in Florence, South Carolina. At the time, Plaintiff was employed by the Defendant hotel and lived with his family in the hotel. On the night of the assault, Plaintiff and his daughter had gone to Walmart to shop. Upon returning to the hotel parking lot, Plaintiff

pulled his vehicle into the parking lot. He was followed into the parking lot by another vehicle. Plaintiff stopped his vehicle and put his emergency light on, signaling the other driver to pass him. The other driver did not pass him. Instead, the other driver followed Plaintiff around the parking lot two more times before exiting his vehicle, approaching Plaintiff's vehicle and shooting into the vehicle, striking Plaintiff and severely injuring him. The identity of the assailant was never discovered.

Prior to commencing the instant civil action, Plaintiff brought a workers' compensation claim against Defendant. In support of his claim, Plaintiff asserted that his injury occurred while in the course and scope of his employment. Specifically, Plaintiff testified that his job at the hotel was "to do the front desk and whatever -- 24/7, whatever was needed to be done." See Workers' Compensation Dep. of Plaintiff Shaileshkumar Patel at p. 21:19-24. Plaintiff testified that he was on call 24 hours a day, seven days a week. See id. Defendant denied liability under the Workers' Compensation Act, asserting that Plaintiff's injuries did not occur while in the course and scope of his employment. In support of its denial, Defendant's owner and managing agent, Raj Patel, testified that the Plaintiff was not required to live in the hotel, was not "on call" 24/7, and that his job duties were limited to working the front desk as a clerk and did not include shopping for supplies for the hotel. See Workers' Compensation Dep. of Raj Patel at p. 48:13-22; 53:4-17; 55:10-25; 56:1-10.

Prior to a hearing on the merits of the workers' compensation claim, the parties chose to settle the disputed claim for the sum of Three Hundred Thousand Dollars (\$300,000.00), and Plaintiff executed a Workers' Compensation Agreement and Final Release.

Plaintiff subsequently filed the instant civil action on October 23, 2020, alleging that Plaintiff's injuries were caused by the negligence of the Defendant in failing to maintain the premises in a proper condition and failing to provide adequate security. Defendant filed its Answer on February 19, 2021, denying the allegations of negligence and asserting as an affirmative defense that Plaintiff's action was barred under the Workers' Compensation Act's exclusivity provision.

LEGAL STANDARD

While the "proper procedure for raising lack of subject matter jurisdiction prior to trial is to file a motion to dismiss," "[i]f a party files a Rule 56 motion for summary judgment on the ground of lack of subject matter jurisdiction, the trial court should treat the motion as if it were a Rule 12(b)(1) motion to dismiss." Edens v. Bellini, 359 S.C. 433, 440-41, 597 S.E.2d 863, 867 (Ct. App. 2004) (internal citations omitted); Posey v. Proper Mold & Eng'g, Inc., 378 S.C. 210, 217, 661 S.E.2d 395, 399 (Ct. App. 2008) (same); Dickert v. Metro. Life Ins. Co., 311 S.C. 218, 219-20, 428 S.E.2d 700, 701 (1993), as modified on reh'g (Apr. 7, 1993) (affirming grant of summary judgment to employer based upon defense that "employee's causes of action against employer are precluded by the exclusivity provision of the South Carolina Workers' Compensation Act"); Loges v. Mack Trucks, Inc., 308 S.C. 134, 139, 417 S.E.2d 538, 541 (1992) (affirming "summary judgment dismissing" some of plaintiff's causes of action based on exclusivity provision of the Act).

Whether the exclusivity provision of the South Carolina Workers' Compensation Act is triggered "is a jurisdictional question." See Edens, 359 S.C. at 439-40, 597 S.E.2d at 866; Glass v. Dow Chem. Co., 325 S.C. 198, 201-02, 482 S.E.2d 49, 51 (1997)

(“South Carolina courts have repeatedly held that determination of the employer-employee relationship for workers’ compensation purposes is jurisdictional.”); Harrell v. Pineland Plantation, Ltd., 337 S.C. 313, 320, 523 S.E.2d 766, 769 (1999) (same).

While a circuit court has “subject matter jurisdiction over tort claims, certain cases may be taken from the trial court’s original jurisdiction by the General Assembly.” Sabb v. S.C. State Univ., 350 S.C. 416, 423, 567 S.E.2d 231, 234 (2002). The General Assembly has vested the Workers’ Compensation Commission with exclusive original jurisdiction over the type of claims made by Plaintiff against Defendant in this action, “such that the circuit court was divested of its original jurisdiction” over Plaintiff’s claim. See id.; Posey, 378 S.C. at 223, 661 S.E.2d at 402 (stating that “[t]he General Assembly has vested the South Carolina Workers’ Compensation Commission with exclusive original jurisdiction over employees work-related injuries” and holding that “circuit court’s original subject matter jurisdiction was divested after it determined [worker] was [defendant’s] statutory employee”).

LEGAL ANALYSIS

The exclusivity provision of the South Carolina Workers’ Compensation Act, Section 42-1-540, provides as follows:

The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death. . . .

S.C. Code Ann. § 42-1-540 (2015).

Section 42-1-540 “is an exclusivity provision, disallowing tort suits against the employer and limiting the injured employee’s rights and remedies to those provided by the Workers’ Compensation Act.” Machin v. Carus Corp., 419 S.C. 527, 534, 799 S.E.2d 468, 471 (2017). “The South Carolina Workers’ Compensation Act . . . is the exclusive remedy against an employer for an employee’s work-related accident or injury.” Edens v. Bellini, 359 S.C. 433, 441, 597 S.E.2d 863, 867 (Ct. App. 2004). “The exclusive remedy doctrine was enacted to balance the relative ease with which the employee can recover under the Act: the employee gets swift, sure compensation, and the employer receives immunity from tort actions by the employee.” Strickland v. Galloway, 348 S.C. 644, 646, 560 S.E.2d 448, 449 (Ct. App. 2002). The Act provides that when an injured employee accepts the benefits of the provisions of the Act, his common law remedies against his employer are extinguished. McCaskey v. Daniel Int’l Corp., 442 F.Supp. 1360, 1362 (D.S.C. 1977); S.C. Code Ann. 42-1-540.

“The only exceptions to the exclusivity provisions are: (1) where the injury results from the acts of a subcontractor who is not the injured person’s direct employer; (2) where the injury is not accidental but rather results from the intentional act of the employer or its alter ego; (3) where the tort is slander and the injury is to reputation; or (4) where the Act specifically excludes certain occupations.” (Internal citations omitted.) Cason v. Duke Energy Corp., 348 S.C. 544, 547 n.2, 560 S.E.2d 891, 893 n.2 (2002) (refusing to carve out additional exception to exclusivity provision, holding that the Act does not permit employees injured in a catastrophic explosion to pursue litigation against their employer outside the exclusive remedy provisions of the Act).

In the present case, both the Plaintiff and his employer Defendant accepted the

provisions of the Workers' Compensation Act when Defendant agreed to pay, and Plaintiff agreed to accept, compensation on behalf of Plaintiff's injury. Plaintiff's act of accepting the benefits afforded by the Act effectively extinguished his common law remedies against his employer. See McCaskey; S.C. Code Ann. § 42-1-540 (2015). Further, none of the enumerated exceptions to the exclusivity provision apply in this case.

Plaintiff argues that the compensation he received under the Act does not bar the instant civil action since Defendant had disputed Plaintiff's workers' compensation claim and denied liability under the Act. The Court rejects this argument.

In Smith v. T.H. Snipes & Sons, 306 S.C. 289, 411 S.E.2d 439 (1991), the contractor and estate of the injured subcontractor disputed whether the injured subcontractor was a statutory employee. The subcontractor's beneficiaries elected and received benefits under the Workers' Compensation Act. They then filed a negligence suit against the contractor. The circuit court granted defendant contractor's motion for summary judgment, finding that plaintiff's civil action was barred by the Act's exclusivity provision. The court noted that plaintiff's action was barred because of the prior payment of benefits under the Act. The court concluded that "a determination of entitlement, payment and acceptance of compensation under the Act precludes an action in circuit court seeking compensation for the identical injury, death or loss." Smith, 306 S.C. at 292, 411 S.E.2d at 441; see also Cook v. Mack's Transfer & Storage, 291 S.C. 84, 87, 352 S.E.2d 296, 298 (Ct. App. 1986) ("The Workers' Compensation Act provides an exclusive system of compensation in derogation of common law rights and is not cumulative or supplemental thereto, but wholly substitutional.")

Similarly, in Martin v. Lockheed Martin Logistic Servs., Greenville County Court of

Common Pleas, Civil Action No. 2019-CP-23-00584, 2020 S.C. C.P. LEXIS 2133 (July 31, 2020), the employer and injured employee disputed whether the injured employee was a statutory employee such that he was subject to the Act's exclusivity provision. 2020 S.C. C.P. LEXIS 2133, at *1. The court, citing Smith, found that the employee's claim was barred regardless of their determination of his statutory employee status because the employee received prior payment of benefits under the Act. 2020 S.C. C.P. LEXIS 2133, at *32. The court further explained that because the employee availed himself of the benefits under the Act by receiving a workers' compensation settlement and executing a Release, any other remedies against the employer were excluded. Id. at *33. In other words, "a determination of entitlement, payment, and acceptance of compensation under the Workers' Compensation Act precludes an action in circuit court seeking compensation for the identical injury or loss." Id.

The only difference between Smith and Martin and the instant case is the specific underlying dispute; in Smith and Martin, the parties disputed the existence of an employer/employee relationship, and in this case, the parties dispute whether the injury arose out of and in the scope of Plaintiff's employment. However, the nature of the underlying dispute is irrelevant. The law is clear: where a plaintiff elects and receives benefits under the Workers' Compensation Act, his common law rights are extinguished. To hold, as Plaintiff here would ask the Court to hold, that any employer who settles a disputed claim under the Act is then subject to tort liability for the same injury, would be contrary to the plain language of § 42-1-540 and the Supreme Court precedent in Smith.

Additionally, the language of the Release at issue unambiguously states it is a "full and final clincher" that is intended to settle the matter "in its entirety." See Workers'

Compensation Agreement and Final Release at p. 2. When South Carolina courts interpret written instruments, the court seeks to ascertain and give effect to the intention of the parties. Campbell v. Bi-Lo, Inc., 301 S.C. 448, 451, 392 S.E.2d 477, 479 (Ct. App. 1990) (finding a Release containing similar language as the instant case extinguished the plaintiff's claims at common law and under the Workers' Compensation Act). The Court finds that the Release was a full and final clincher that extinguished any civil claims on Plaintiff Patel's behalf, despite Defendant's denial of liability in the Release.

Furthermore, to the extent Plaintiff now argues that he was not in the course and scope of his employment at the time of his injury, the Court finds this argument contrary to the evidence in the record. The record shows that Plaintiff has consistently asserted in both the workers' compensation action and instant tort action that he was injured in the course and scope of his employment. Plaintiff testified in the workers' compensation action that he was a "24/7", "on call" employee. The workers' compensation Release, signed by the Plaintiff, states:

It appears that Claimant was an employee of Florence Investment, LLC dba Microtel Inn & Suites and alleges that on October 23, 2017, he sustained an injury by accident arising out of and in the course of said employment when he was shot in the hotel parking lot by an unknown assailant, sustaining multiple, severe injuries. . . .

See Workers' Compensation Agreement and Final Release at p. 1.

At his deposition in the instant tort action, Plaintiff testified that on the night of the assault, Plaintiff and his daughter went to Walmart to get groceries for themselves and for the hotel breakfast. See Civil Action Dep. of Plaintiff Shaileshkumar Patel at pp. 22:23-23:8.

Plaintiff brought his claim under the Act and accepted the benefits of the Act when he accepted compensation from the Defendant. Plaintiff's acceptance of those benefits extinguished his common law remedies against Defendant. See McCaskey; Smith, Martin; S.C. Code Ann. § 42-1-540 (2015).

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the Motion for Summary Judgment filed by Defendant Florence Investment, LLC d/b/a Microtel Inn & Suites is GRANTED.

Honorable Clifton Newman
Florence County, South Carolina

_____, 2022



Florence Common Pleas

Case Caption: Shaileshkumar Patel VS Florence Investment Llc , defendant, et al
Case Number: 2020CP2102414
Type: Order/Summary Judgment

So Ordered

s/ Clifton B. Newman, 2127