STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
TERENCE SULLIVAN,	)	CASE NO. 2021-CP-26-05377
	)	
PLAINTIFF,	)	
	)	
vs.	)	**ORDER**
	)	
OCEAN 22 VACATION OWNERS' ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	
	)	

This matter came before this Court on February 14, 2022 at the Horry County Courthouse upon the motion of Defendant Ocean 22 Vacation Owners' Association, Inc. (hereinafter the "Association" or "Defendant") to dismiss Plaintiff Terrance Sullivan's Complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), SCRCP. Plaintiff was represented by J. Clay Hopkins, Esquire. The Association was represented by W. Cole Shannon, Esquire. The Association's Motion is premised on the fact that Plaintiff's sole remedy is available through the South Carolina Workers' Compensation Act, S.C. Code Ann. § 42–1–400 since Plaintiff was a statutory employee of the Association at the time of the accident. As such, the Association argues, Plaintiff tort liability claims in circuit court are barred.

Having reviewed the court record, the Association's motion, memoranda, attachments, exhibits, and affidavits, and having considered the oral arguments of

counsel, and the applicable law, I find that the matter is now ripe for disposition and hereby **GRANT** the Association's Motion to Dismiss.

APPLICABLE LAW

Subject matter jurisdiction is the "power to hear and determine cases of the general class to which the proceedings in question belong." *Coon v. Coon,* 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005); *Mr. T v. Ms. T,* 378 S.C. 127, 133, 662 S.E.2d 413, 416 (Ct. App. 2008). "Subject matter jurisdiction is met if the case is brought in the court which has the authority and power to determine the type of action at issue." *Washington v. Whitaker,* 317 S.C. 108, 115, 451 S.E.2d 894, 898 (1994). A challenge to subject matter jurisdiction can be raised by a motion to dismiss pursuant to Rule 12(b)(1), SCRCP. *Ballenger v. Bowen,* 313 S.C. 476, 478, 443 S.E.2d 379, 380, n. 2 (1994); *Wheeler v. Morrison,* 313 S.C. 440, 442, 438 S.E.2d 264, 265 (Ct. App. 1993).

South Carolina has adopted a comprehensive workers' compensation scheme for governing claims between an employer and an employee pertaining to work-related injuries. In circumstances where the South Carolina Workers' Compensation Act covers an employee's work-related injury, the Act provides the exclusive remedy against the employer, and the employee gives up all "other rights and remedies ... as against his employer, at common law or otherwise, on account of [the] injury." S.C. Code Ann. § 42–1–540; *see also Sabb v. S.C. State Univ.,* 350 S.C. 416, 422, 567 S.E.2d 231, 234 (2002). Workers' compensation statutes are construed liberally in favor of coverage, and South Carolina's policy is to resolve jurisdictional doubts in

favor of the inclusion of employees within workers' compensation coverage. *Hernandez-Zuniga v. Tickle*, 374 S.C. 235, 243, 647 S.E.2d 691, 695 (Ct. App. 2007)

The immunity provided by the Act's exclusivity provision is conferred not only on the employee's direct employer but also on statutory employers as well. The determination of whether a worker is a statutory employee is jurisdictional and a question of law. *Harrell v. Pineland Plantation, Ltd.* 337 S.C. 313, 320, 523 S.E.2d 766, 769 (S.C. 1999); *Glass v. Dow Chem. Co.,* 325 S.C. 198, 201-02, 482 S.E.2d 49, 51 (S.C. 1997).

RELEVANT FACTS

The Association filed its Motion to Dismiss on October 15, 2021 along with its memorandum in support, numerous exhibits, and the affidavit of Kelly Lodde, the Vice President and Assistant Secretary of Plaintiff's employer, HGV, Inc. Plaintiff did not file any memoranda in response to the Association's Motion or Ms. Lodde's affidavit. Accordingly, the Court adopts the following uncontested facts from the Association's Motion and Ms. Lodde's affidavit:

As stated in Ms. Lodde's Affidavit, Plaintiff is an employee of Hilton Grand Vacations, Inc. ("HGV, Inc.") and was injured while working at a HGV brand time-share resort managed by HGV's wholly owned subsidiary, Hilton Grand Vacations Management, LLC ("HGVM") (collectively "HGV").[1] Following the accident, Plaintiff

[1] "A holding company and its wholly owned subsidiary will be considered a single employer for workers' compensation purposes if the two corporations are so integrated and commingled that neither can be realistically viewed as a separate economic entity." *Poch v. Bayshore Concrete Prod./S.C., Inc.*, 405 S.C. 359, 374, 747 S.E.2d 757, 765 (2013) (quoting 1 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Corporations* § 43.80 (Supp.2012)).

sought workers' compensation benefits through his employer, HGV, Inc. Plaintiff's claim was resolved with his employer in June of 2021 whereby Plaintiff settled his claims for $80,000.00. A Medicare Set Aside trust account was established for Plaintiff in the amount of $57,285.31. Two months after settling his workers' compensation claim with HGV, Plaintiff filed suit against the Association alleging causes of action for (1) Premises Liability – Negligence/Gross Negligence as to an Invitee and (2) Negligent Hiring, Training, Supervision and Retention.

As explained in Ms. Lodde's Affidavit, HGV, Inc., is a publically traded corporation which develops, manages, markets, and operates timeshare and vacation club ownership resorts whereby club members are jointly owned by members giving them use of the club properties for limited periods of time. In 2013, HGV, Inc., as the ultimate parent company, entered into an agreement through its wholly owned subsidiary, HGVM, to manage and operate the property where Plaintiff was employed (hereinafter the "HGV Resort" or "Project"). This arrangement was formalized in the "Declaration of Covenants, Conditions and Restrictions and Vacation Ownership Instrument for Ocean 22 Vacation Suits." Thereafter, the Association was established in order to manage, operate and administer the HGV Resort on behalf of timeshare owners.

According to Ms. Lodde's Affidavit, the Association is a nonprofit corporation that is made up of each owner with an ownership interest in the HGV Resort. Under "Management of Association", the Declarations state that the Association's sole affirmative obligation is to "employ a manager for the Project pursuant to a written

management agreement" which delegates "authority to the Manager to carry out the duties and obligations of the Association" and authorizes the manager "to do all other acts necessary for the proper operation and maintenance of the Project [.]" In accordance with this directive, the Association entered into a management agreement with HGV, under which HGV undertook to "manage and operate the Project in accordance with the same practices and standards utilized in the management of other Hilton Grand Vacation Club projects" and "maintain and repair the Project to a first class resort standard." As such, HGV agreed to "employ, compensate and supervise all persons necessary to manage, maintain, administer and operate the Project."

As noted in Ms. Lodde's Affidavit, HGV employed Plaintiff pursuant to the management agreement as a "bellperson" to assist owners and guests with transporting and/or securing their luggage; to provide instructions regarding the amenities of the room and property services and activities provided for guests' use, and to deliver messages, express check-out folios, newspapers and other requested items to the owners and guests.

LEGAL ANALYSIS

In assessing whether the Association qualifies as Plaintiff's statutory employer for the purposes of workers' compensation exclusivity, the court must make two (2) determinations: First, the Association must qualify as a business under the Act. Second, the work contracted out to Plaintiff's employer, HGV, must have constituted

part of the Association's "trade, business, or occupation." *Harrell*, 337 S.C. at 321, 523 S.E.2d at 770.

With regard to the first determination, I find that the Association is a business under the Act's extensive definition of the word "employer." Accordingly, the Court will now move to the second determination.

In analyzing whether the Association is Plaintiff's statutory employer under the Act, the Court must look to the nature of the work contracted out to HGV by the Association in order to determine whether it was part of the Association's "trade, business or occupation." *Boone v. Huntington and Guerry Elec. Co.*, 311 S.C. 550, 552, 430 S.E.2d 507, 508 (1993). Here, the business of the Association is governed by the Declarations and is performed in its entirety by the Plaintiff's direct employer. The Association hired HGV to manage, operate, and administer the HGV Resort. The Association instructed HGV to hire and employ all employees necessary for the operation of the HGV Resort and empowered it to perform all necessary duties. The operation of the HGV Resort, on behalf of the time-share owners, is the Association's sole business, and the work being performed by HGV was essential to its operation. HGV acts in every respect on behalf of the Association, employing the Plaintiff to perform certain duties essential to the operation of the HGV Resort. Therefore, the Association is the Plaintiff's statutory employer. Furthermore, as pointed out by authorities cited by the Association, the South Carolina Workers' Compensation Commission has held that resort subcontractors' work constitutes part of the resort operator's trade, business or occupation. Similarly, our courts have found the

existence of a statutory employer-employee relationship when entities, like the Association, delegate their responsibilities to a management company because the management company assumes the entity's trade, business or occupation. *See Harrell*, 337 S.C. at 320; 523 S.E.2d at 767; *Carter v. Florentine Corporation*, 310 S.C. 228, 423 S.E.2d 112 (1992), *overruled on other grounds, Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379 (1994).

Based upon the foregoing, I find that the Association is Plaintiff's statutory employer because it is (1) a business and (2) because HGV's work is part of the Association's trade, business, or occupation. As such, Plaintiff's claims must be dismissed as a matter of law. To hold the Association liable to Plaintiff in tort for the same injury already compensated by HGV would circumvent the express public policy underlying South Carolina's system of workers' compensation: the quick and efficient delivery of medical benefits to an injured worker at reasonable cost to the employer. *Nicholson v. S.C. Dep't of Soc. Servs.,* 411 S.C. 381, 389, 769 S.E.2d 1, 5 (2015) ("The Workers' Compensation Act was designed to supplant tort law by providing a no-fault system focusing on quick recovery, relatively ascertainable awards, and limited litigation.").

Plaintiff's exclusive remedy is dictated by the Workers' Compensation Act. As such, this Court lacks subject matter jurisdiction to entertain his work related injury claims. Therefore, the Court **GRANTS** the Association's Motion to Dismiss and dismisses Plaintiff's Complaint **WITH PREJUDICE.**

IT IS SO ORDERED.

Hon. R. Keith Kelly

Dated:_____

Horry Common Pleas

Case Caption: Terence Sullivan VS Ocean 22 Vacation Owners Association Inc

Case Number: 2021CP2605377

Type: Order/Dismissal

It is so Ordered.

s/ R. Keith Kelly - 2165