ELECTRONICALLY FILED - 2024 May 24 1:05 PM - AIKEN - COMMON PLEAS - CASE#2020CP0202353

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	SECOND JUDICIAL CIRCUIT
	Civil Action No.: 2020-CP-02-02353
DAVID HOBBS, Individually, and as Personal Representative of the Estate of ANDREW HOBBS (deceased),	
Plaintiff,	**ORDER DENYING DEFENDANT'S MOTION TO DISMISS**
v.	
D/C POWER PRODUCTS, INC.,	
Defendant.	

RECEIVED
Jun 19 2024
SC Court of Appeals

THIS MATTER comes before the Court on a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) SCRCP filed by D/C Power Products, Inc. (hereinafter "D/C Power"). D/C Power is the only remaining defendant in an action initiated by David Hobbs, a personal representative of the Estate of Andrew Hobbs, for damages sustained by Andrew Hobbs in an employment accident occurring on June 23, 2020, at the Bridgestone Tire plant near Aiken, South Carolina. D/C Power takes the position that it was a statutory employer of Andrew Hobbs at the time of the accident and therefore has responsibility only under the Workers Compensation statute. It further argues that if jurisdiction exists under the Workers Compensation statute it is immune to tort liability to the Estate of Andrew Hobbs under the Survival and Wrongful Death acts asserted in the Estate's Complaint. The Plaintiff takes the position that the Workers Compensation Act does not apply to D/C Power and that D/C Power was not the statutory employer of Andrew Hobbs at the time of the accident. Therefore, it is Plaintiff's position that the responsibility of D/C Power extends to tort liability.

ELECTRONICALLY FILED - 2024 May 24 1:05 PM - AIKEN - COMMON PLEAS - CASE#2020CP0202353

BACKGROUND

Bridgestone Tires, ("Bridgestone") is a major manufacturer of tires which has one of its many plants located near Aiken, South Carolina. It often utilizes tire racks to temporarily store manufactured tires before sale. A number of the component parts for the tire racks were packaged in sea containers. Bridgestone Tires had difficulty removing the pallets containing the component parts and therefore entered into a contract with D/C Power to perform the task of removing the pallets containing the component parts from the sea containers. D/C Power in turn rented a lull (a lull is a material telehandler made by JLG which works as a telescopic forklift) and sought workers from Labor Finders (WRDV, Inc.) to assist in the work. Labor Finders provided two of its workers for this job: Devion Garrison to operate the lull and Andrew Hobbs to serve as a spotter.

While Devion Garrison was using the lull, he accidentally tilted the lull's forks downward. This caused the component parts for the tire racks to fall to the ground where they cascaded forward and pinned Andrew Hobbs against a sea container. Andrew Hobbs sustained internal injuries as a result of the accident and lost consciousness after approximately thirty minutes. Andrew Hobbs would later die of his injuries.

As part of its Motion, D/C Power contends that Plaintiff's claims should be dismissed because it was the statutory employer of Andrew Hobbs, thereby divesting this Court of subject matter jurisdiction and limiting Plaintiff's remedy to that provided under the South Carolina Workers' Compensation Act ("Act"). In response, Plaintiff contends that D/C Power is excluded from the Act because it lacked four or more employees in South Carolina and it failed to comply with the Act's filing and insurance requirements. Plaintiff further contends that even if D/C Power was subject to the Act, it was still not the statutory employer of Andrew Hobbs at the time of his death because Bridgestone made a legitimate business decision to outsource the unloading project to D/C Power.

In evaluating the Motion, this Court notes there are two main issues in determining whether D/C Power is entitled to tort immunity: (1) whether D/C Power was subject to the Act at the time of Andrew Hobbs's death; and (2) if D/C Power was subject to the Act, whether Andrew Hobbs

was D/C Power's statutory employee at the time of his death.

Having considered the evidence in the record, the briefs submitted in support thereof and in opposition thereto, and the oral argument of the parties' respective counsel, the Court denies D/C Power's Motion to Dismiss.

STANDARD OF REVIEW

"Coverage under the Workers' Compensation Act is generally dependent on the existence of an employer-employee relationship." *Posey v. Proper Mold & Eng'g, Inc.*, 378 S.C. 210, 216, 661 S.E.2d 395, 398 (Ct. App. 2008). However, "there are certain statutory exceptions to this general rule." *Edens v. Bellini*, 359 S.C. 433, 597 S.E.2d 863 (Ct. App. 2004). "One of these exceptions is found in section 42-1-410 of the Workers' Compensation Act which, under some circumstances, imposes liability on an employer or contractor for the payment of compensation benefits to a worker not directly employed by the contractor." *Posey*, 378 S.C. at 217, 661 S.E.2d at 399. "The Workers' Compensation Act specifically provides statutory employees are included within the scope of the Act . . . ." *Id.*

> Three tests are applied to determine whether the activity of an employee of a subcontractor is sufficient to make him a statutory employee of the contractor within the meaning of section 42-1-410: (1) Is the activity an important part of the contractor's business or trade? (2) Is the activity a necessary, essential, and integral part of the contractor's trade, business, or occupation? or (3) Has the identical activity previously been performed by the contractor's employees?

Id. at 218, 661 S.E.2d at 400.

The question of Andrew Hobbs' employment relationship with D/C Power is a jurisdictional question. *Id.* at 216, 661 S.E.2s at 398. The Court's analysis is therefore controlled by Rule 12(b)(1), SCRCP, which states that a cause of action must be dismissed if a court lacks subject matter jurisdiction.

ELECTRONICALLY FILED - 2024 May 24 1:05 PM - AIKEN - COMMON PLEAS - CASE#2020CP0202353

1. **<u>D/C Power is not subject to the Worker's Compensation Act.</u>**

Section 42-1-360 of the Workers' Compensation Act, states "[t]his title does not apply to: [...] any person who has regularly employed in service less than four employees in the same business within the State or who had a total annual payroll during the previous calendar year of less than three thousand dollars regardless of the number of persons employed during that period [....]" The plain language of section 42-1-360(2) excludes two classes of employers. The first class of employers excluded are those who do not regularly employ four or more people in South Carolina. In the alternative, it excludes employers who have a payroll of less than $3,000 in South Carolina, no matter how many persons are employed. Since D/C Power did not regularly employ four or more persons in South Carolina, it is exempted from the Act.

Although D/C Power, as an exempted employer, could have included itself under the Act by complying with section 42-5-20 or filing a proper notice under section 42-1-380, there is no evidence that it did so. D/C Power argues that it did not take action due to never having received a claim for workers compensation benefits by the Estate of Andrew Hobbs. However, even if it had provided notice, D/C Power has failed to offer sufficient proof that it carried workers' compensation coverage such to secure compensation for the death of Andrew Hobbs. Moreover, even if this Court were to find the necessary insurance coverage, there is no evidence that D/C Power complied with section 42-1-380. Under this section, an otherwise exempted employer may opt into the Act "by filing with the commission a written notice of his desire to be subject to the terms and provisions of this title." S.C. Code Ann. § 42-1-380. In determining what constitutes proper notice under section 42-1-380, our Supreme Court has held that an employer's procurement of appropriate insurance combined with the carrier's filing of that policy with the Workers' Compensation Commission constituted "substantial compliance with the Act." *Nolan v. Nat'l Sales Co.*, 292 S.C. 1, 5, 354 S.E.2d 575, 578 (Ct. App. 1987) (citing *White v. J.T. Strahan Co.*, 244 S.C. 120, 135 S.E.2d 720 (1964)).

However, "[a]n employer's mere procurement of workers' compensation insurance carrying a multi-state endorsement does not serve to estop the employer from denying coverage...

ELECTRONICALLY FILED - 2024 May 24 1:05 PM - AIKEN - COMMON PLEAS - CASE#2020CP0202353

[s]omething else is required in South Carolina. That 'something else' is substantial compliance with Section 42-1-380." *Id.* at 5, 354 S.E.2d at 577 (internal citations omitted).

Here, there is no evidence that D/C Power or its workers' compensation carrier ever made any type of filings with the Workers' Compensation Commission prior to the death of Andrew Hobbs. Moreover, D/C Power's submission of a workers' compensation policy containing a multi-state endorsement is insufficient under *Nolan* to prove substantial compliance with section 42-1-380. As such, D/C Power is not entitled to tort immunity in this matter.

2. **D/C Power was not the statutory employer of Andrew Hobbs at the time of his death.**

The Court finds that even if D/C Power was subject to the Act, it was not the statutory employer of Andrew Hobbs on the day of his death. "The statutory employee doctrine converts conceded non-employees into employees for purposes of the Workers' Compensation Act." *Keene v. CNA Holdings, LLC*, 426 S.C. 357, 367, 827 S.E.2d 183, 188-89 (Ct. App. 2019) (quoting *Glass v. Dow Chem. Co.*, 325 S.C. 198, 201 n.1, 482 S.E.2d 49, 50 n.1 (1997)). The statutory employer doctrine is codified under section 42-1-400, which states:

> When . . . [an] "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 which he would have been liable to pay if the workman had been immediately employed by him.

Section 42-1-420 applies this same liability to subcontractors who hire other subcontractors on the same project.

The purpose of the statutory employer doctrine is "to prevent owners and contractors from subcontracting out their work to avoid liability for injuries incurred in the course of employment." *Keene v. CNA Holdings, LLC*, 436 S.C. 1, 3, 870 S.E.2d 156, 157 (2021) (quoting *Glass*, 325 S.C. at 201 n.1, 482 S.E.2s at 50 n.1). As stated above, South Carolina courts have traditionally applied

ELECTRONICALLY FILED - 2024 May 24 1:05 PM - AIKEN - COMMON PLEAS - CASE#2020CP0202353

three basic tests in determining whether an activity constituted a company's "trade, business or occupation": (1) Is the activity an important part of the contractor's business or trade? (2) Is the activity a necessary, essential, and integral part of the contractor's trade, business, or occupation? or (3) Has the identical activity previously been performed by the contractor's employees? *Posey*, 378 S.C. at 218, 661 S.E.2d at 400.

However, *Keene* "moved away from the formalism of the three-part test to refocus the inquiry on the key question posed by the statute: whether the work contracted out is part of [the owner's] trade, business or occupation." *Zeigler v. Eastman Chem. Co.*, 54 F.4th 187, 194 (4th Cir. 2022) (quoting *Keene v. CNA Holdings, LLC*, 436 S.C. at 162-163 (2021). Under *Keene*, "when an employer 'makes a legitimate business decision' to outsource a portion of its work, the contractors it hires to perform that work are not 'statutory employees' for workers' compensation purposes." *Id.* (citing *Keene* at 163).

The evidence in this case indicates that Bridgestone made a legitimate business decision to outsource its work to D/C Power. The general manager of factory and public warehouses for Bridgestone, Amanda Bundy, stated in her deposition that the reason Bridgestone decided to hire an outside contractor to complete the unloading project was because "[Bridgestone] felt the containers were unsafe to unload with the equipment and knowledge that [they] had." Dep. 71:23–25.

Ms. Bundy's further testimony indicates this project was not part of Bridgestone's normal operations: "[o]ne of the reasons [Bridgestone] contracts this work out is we—it's just not within our normal operations to utilize a lull or unload sea containers in this way, so I don't feel that I'm equipped to provide you with what adequate training should look like." Bundy Dep. 113:9–14. Based upon the evidence in this case, the Court finds Bridgestone made a legitimate business decision to outsource the unloading project.

The Court further notes that Andrew Hobbs would not be a statutory employee even under the three traditional tests. First, the unloading of the shelves was not an important part of Bridgestone's business or trade, as testified to by Ms. Bundy. Nor was the activity of unloading

ELECTRONICALLY FILED - 2024 May 24 1:05 PM - AIKEN - COMMON PLEAS - CASE#2020CP0202353

tire racks a necessary, essential, and integral part of Bridgestone's trade, business, or occupation. As to the third test, it appears to the Court that the unloading of the sea containers with the use of a lull was performed not by employees of Bridgestone, but by its onsite contractor, and then finally D/C Power. As such, neither D/C Power nor Bridgestone were the statutory employer of Andrew Hobbs at the time of his death. Accordingly, D/C Power's Motion to Dismiss is denied.

CONCLUSION

The Court has thoroughly reviewed the entire record, including all pleadings, motions, and responses thereto. The Court was assisted by the arguments of counsel and responses of counsel to the Court at the hearing of this matter. For the reasons stated above, Defendant D/C Power's Motion to Dismiss is **DENIED.**

IT IS SO ORDERED!

____
The Honorable Diane Schafer Goodstein
Judge, Second Judicial Circuit

_______________, South Carolina

__________________, 2024

ELECTRONICALLY FILED - 2024 May 24 1:05 PM - AIKEN - COMMON PLEAS - CASE#2020CP0202353

Aiken Common Pleas

Case Caption: David Hobbs VS Martins Industries Inc , defendant, et al

Case Number: 2020CP0202353

Type: Order/Dismissal

It is so Ordered!

s/Diane S. Goodstein

Electronically signed on 2024-05-24 12:43:59

ELECTRONICALLY FILED - 2024 May 24 1:05 PM - AIKEN - COMMON PLEAS - CASE#2020CP0202353