

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Latoya White, (Guardian ad Litem for
Minor Child, Under the Age of Eighteen
(18), Saroya White)

Plaintiff,

vs.

McDonald's Orangeburg, SC 706 John C.
Calhoun Drive Orangeburg, SC 29115

Emory S. Main,

Lisa Main,

John Doe
(Unidentified Corporate Entity)

Defendants.

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

C/A#: 2020-CP-38-01383

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

RECEIVED

Nov 03 2021

SC Court of Appeals

This matter came before the Court on September 27, 2021 on Defendants' Motion to Dismiss Plaintiff's Amended Complaint. Plaintiff's counsel, Joshua Koger, Jr., Esq., and Defendants' counsel, John P. Linton, Jr., Esq. were present at the hearing. After having reviewed the pleadings, motion, and hearing the arguments of counsel, the Court grants Defendants' Motion to Dismiss pursuant to Rules 12(b)(1) and (6) of the South Carolina Rules of Civil Procedure because Plaintiff's tort claims are preempted by the South Carolina Workers' Compensation Act, S.C. Code Ann. § 42-1-10, *et seq.*

On December 1, 2020, Plaintiff Latoya White, as guardian ad litem for Saroya White, a minor ("White"), initiated this case by filing a Summons and Complaint against "McDonald's of Orangeburg, SC 706 John C. Calhoun Drive, Orangeburg, SC 29115." Plaintiff filed an Amended

Complaint on March 29, 2021. The Amended Complaint alleges that White and a co-employee, Katherine Johnson, were involved in an altercation on December 2, 2018 at the McDonald's restaurant located at 706 John C. Calhoun Drive in Orangeburg, South Carolina, which caused White to suffer personal injuries. The Amended Complaint alleges that Johnson was a manager on duty at the time and that both White and Johnson were employees of the Defendants. The alleged physical altercation followed an alleged verbal altercation between the two co-employees.

Defendants filed the instant Motion to Dismiss on May 24, 2021, seeking dismissal of Plaintiff's claims on the grounds that the sole and exclusive remedy against Defendants, as White's alleged employer, is the Workers' Compensation Act. For the reasons explained herein, the Court grants the motion and dismisses the case.

DISCUSSION

The Court finds that Plaintiff's tort claims against Defendants are preempted by the South Carolina Workers' Compensation Act, S.C. Code Ann. § 42-1-10, *et seq.* (the "Act"). Section 42-1-540 of the Act provides:

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 . . . as against his employer,* at common law or otherwise, on account of such injury, loss of service, or death.

(double emphasis added).

The exclusivity of the workers' compensation remedy applies to claims against an employer when an employee alleges, they were injured, assaulted, or battered by a co-employee. *See Dickert v. Metropolitan Life Ins. Co.*, 311 S.C. 218, 428 S.E.2d 700, 701 (1993) (affirming the dismissal of claims asserted by an employee against employer alleging injury at the hands of a co-employee, because said claims are precluded by the exclusivity provision of the Workers'

Compensation Act); *Edens v. Bellini*, 359 S.C. 433, 597 S.E.2d 863 (Ct. App. 2004).

Further, no exception to the exclusivity provisions of S.C. Code Ann. § 42-1-10 is alleged, nor is any exception applicable based upon the allegations in this case. With regard to claims against an employer, the intentional tort exception is limited to “injuries inflicted by an employer who acts with a deliberate or specific intent to injure.” *Peay v. U.S. Silica Co.*, 437 S.E.2d 64, 65-66 (1993); *Edens v. Bellini*, 359 S.C. 433, 597 S.E.2d 863 (Ct. App. 2004). There is no allegation in the case that the Defendants had any deliberate or specific intent to harm White. Neither of the claims asserted against Defendants are intentional torts. White alleges he co-employee intentionally used force but has not alleged any intent by any Defendants. It is also worth noting that the intentional tort exception is construed very narrowly by South Carolina courts. *See, Edens*, 597 S.E.2d at 870-71 (finding that liability cannot “be stretched to include accidental injuries caused by the gross, wanton, willful, deliberate, *intentional*, reckless, culpable, or malicious negligence, breach of statute, or other misconduct . . . short of a conscious and deliberate intent directed to the purpose of inflicting an injury”) (emphasis added).

There is also no allegation that Johnson was Defendants’ alter ego. The *Dickert* case addressed the issue of whether an employee who has committed a battery against a co-employee can be considered to be the “alter ego” of the employer. The South Carolina Supreme Court limited the definition of “alter ego” to “dominant corporate owners and officers,” and specifically declined to extend the definition to supervisory employees. 311 S.C. at 221, 428 S.E.2d at 701 (quoting 2A Larson, *Workmen's Compensation*, §§ 68.21 and 68.22). South Carolina appellate courts, as well as the Fourth Circuit, have applied the definition of alter ego set forth in *Dickert* on numerous occasions. *See, e.g., McClain v. Pactiv Corp.*, 602 S.E.2d 89, 89 (Ct. App. 2004); *Washington v. Hilton Hotels Corp.*, C/A No. 2:07-2694-CWH, 2008 WL 747792, *4 (D.S.C.

March 17, 2008); *Pauling v. Greenville Transit Authority*, C/A No. 6:05–1372–HMH–BH, 2006 WL 3354512, *5 (D.S.C. Nov.16, 2006); *Palmer v. House of Blues Myrtle Beach Restaurant Corp.*, C/A No. 4:05–3301–RBH, 2006 WL 2708278, *2 (D.S.C. Sep 20, 2006); *Taylor v. Cummins Atlantic, Inc.*, 852 F. Supp. 1279, 1282 (D.S.C.1994); *Bryant v. INA Bearing Co., Inc.*, 14 F.3d 593 (4th Cir.1993). Plaintiff’s Amended Complaint alleges that Johnson was a store manager on duty at the McDonalds. The Amended Complaint is devoid of any allegations that Johnson was a dominant corporate owner or officer of the entity that employed White and Johnson, nor could such plausibly be alleged. Johnson is alleged to be a store-level, on duty manager and nothing more.

Accordingly, the Court finds that the exclusivity remedy provision of the Workers’ Compensation Act precludes this case against Defendants.

CONCLUSION

Therefore, for the reasons explained above, Defendants’ Motion to Dismiss is **GRANTED**.

IT IS SO ORDERED!

G.D. Morgan, Jr.
Circuit Court Judge

October __, 2021
Greenville, South Carolina



Orangeburg Common Pleas

Case Caption: Latoya White VS Mcdonald'S Of Orangeburg

Case Number: 2020CP3801383

Type: Order/Dismissal

So Ordered

G.D. Morgan Jr.