

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

Jeremy Slifko	:	
Plaintiff	:	January Term, 2016
	:	
vs.	:	No. 0492
	:	
Carpenter Technology Corporation,	:	
Fortune International, Inc., and	:	
Victor Taichung Machinery Works Co., LTD	:	
Defendants	:	

ORDER

And Now, this 13th day of February, 2018, after considering the Motion for Summary Judgment filed by Carpenter Technology Corporation, and All of the Responses thereto, and, for the reasons set forth in the Memorandum filed this date, it is hereby **ORDERED** that the Defendant's Motion is **DENIED** in its entirety.

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.

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J. EVERS
DAY FORWARD

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Victor Taichung Machinery Works Co., LTD	:	
Defendants	:	

MEMORANDUM IN SUPPORT OF ORDER DENYING
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

MASSIAH-JACKSON, J.

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Defendant Carpenter Technology Corporation asserts that summary judgment should be granted in its favor. Carpenter claims: **A.** That it did not owe a duty of care to Plaintiff Jeremy Slifko; and, **B.** That it is immune from liability pursuant to Section 481(a) of the Workers Compensation Act. This Court does not agree.

Defendant-Carpenter admits that Shalmet Corporation is a subsidiary of Carpenter. Jeremy Slifko was an employee of Shalmet. On February 14, 2014, Mr. Slifko suffered permanent and catastrophic injuries at work when his gloved hand was pulled into a spinning lathe machine. Two fingers were amputated.

Plaintiff-Slifko initiated this civil action in 2016 against Defendant-Carpenter based on negligence. He also filed suit against Fortune International, Inc. and Victor Taichung Machinery Works, Co., Ltd. grounded in strict liability and negligence. Defendant-Fortune opposes summary judgment.

The purpose of a motion for summary judgment is not to determine what the facts are. The Motions Court must determine whether there are genuine issues of material fact in dispute. If so, a jury may decide a case based on direct as well as circumstantial evidence. They may believe all or part or none of the witnesses' testimony.

A. Restatement (Second) of Torts, §324A.

Restatement (Second) of Torts §324A states:

“One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if

(a) his failure to exercise reasonable care increases the risk of such harm, or

(b) he has undertaken to perform a duty owed by the other to the third person, or

(c) the harm is suffered because of reliance of the other or the third person upon the undertaking.”

The question of whether a duty exists as part of the negligence claim, is a question of law.

Morenko v. Downs Racing LP, 118 A.3d 1111, 1114 (Pa. Superior Ct. 2015). There is sufficient evidence in this record that a jury might weigh whether Defendant-Carpenter created and printed the Four-Blocker “log-out-tag-out” instructions; that Carpenter’s name is printed on the instructions; that the instructions required use of gloves; that the instructions were attached to the lathe at the time of delivery from Carpenter to Shalmet; and, much more. The arguments set forth at Carpenter’s Reply Brief, dated January 26, 2018, pages 4 and 5, are not dispositive. Rather these point to disputed factual issues;

challenges to inferences; and, disagreements with evidence. **This Court will paraphrase** Scampone v. Grane Healthcare Co., 169 A.3d 600, 619 (Pa. Superior Ct. 2017), where the Scampone Court reversed a nonsuit and relied on §324A:

“If a jury finds . . . that [Carpenter] failed to exercise reasonable care [in printing the instructions] and its failure . . . increased the risk of harm to [Slifko] or that [Carpenter] undertook a duty owed by [its subsidiary] to [Slifko], then Plaintiff [Slifko] can recover”

The case relied on by Defendant-Carpenter approved a pretrial denial of summary judgment when the parties presented evidence that a parent company implemented changes to safety procedures at the subsidiary’s location after plaintiff’s injury. Barnes v. Alcoa, 145 A.2d 730, 738 (Pa. Superior Ct. 2016). The Barnes Court affirmed a nonsuit in favor of the parent company because at trial there was no evidence presented of the parent company’s involvement in property maintenance matters.

At this juncture, where the record reveals disputed issues relating to Defendant-Carpenter’s involvement with safety issues directly relevant to the ownership and operation of the lathe, and, Shalmet’s apparent reliance on the Defendant’s instructions, and, Slifko’s reliance on Defendant’s instructions, and, Defendant-Carpenter’s knowledge that the instructions differed from the safety instructions at its own facilities, this Motions Court concludes that this summary judgment motion is without merit.

B. Workers Compensation Act, §481(a).

Defendant-Carpenter asserts that if it is determined to be responsible for its subsidiary, Shalmet, then it is entitled to immunity pursuant to the Workers Compensation Act. Defendant's Memorandum, dated December 1, 2017, states at 11:

“Although Carpenter was not Plaintiff's employer, Plaintiff seeks to impose Shalmet's broad duties onto Carpenter. If Carpenter is to be held responsible for Shalmet's duties in this case (as Plaintiff alleges it should), then Carpenter should be considered an employer pursuant to Section 481(a) of the WCA for the purpose of this case and granted immunity from Plaintiff's negligence.”

It is apparent that Defendant-Carpenter is impermissibly seeking to pierce its own corporate veil. In Kiehl v. Action Manufacturing Co., 535 A.2d 571 (Pa. 1987), our Supreme Court cited numerous state and federal jurisdictions which specifically reject a parent corporation's attempt to gain immunity by workers compensation laws. As noted throughout the pleadings and memoranda herein, parent corporations are separate entities from their subsidiaries. The Kiehl Court quoted from Sams v. Redevelopment Authority, at 535 A.2d 574:

“As we stated in *Sams v. Redevelopment Authority*, 431 Pa. 240, 244 A.2d 779, 781 (1968):

... one cannot choose to accept the benefits incident to a corporate enterprise and at the same time brush aside the corporate form when it works to their (shareholders) detriment. ... the shareholders cannot be heard to argue that the courts should not treat them as a corporation for some purposes and as a corporation for other purposes whichever suits their present economic interest.”

See also, Mohan v. Publicker Industries, Inc., 222 A.2d 876 (Pa. 1966).

In this case, as in Sams, supra, Carpenter does not allege it controlled the work functions of Mr. Slifko. The Defendant does not even suggest it was Plaintiff-Slifko's employer. Defendant-Carpenter is simply attempting to accept the benefits incident to a corporate enterprise, i.e., immunity under the Workers Compensation Act, because it suits Carpenter's economic interest. See also, Joyce v. Super Fresh Markets, Inc., 815 F.2d 943 (3rd Cir. 1987); Harris v. Seiavitch, 9 A.2d 375 (Pa. 1939).

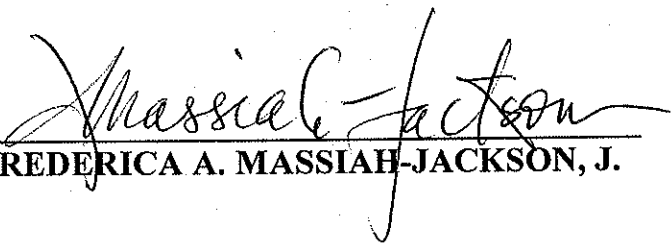
This Court declines to pierce the corporate veil at the request of the creator of the veil. Kiehl, supra., 535 A.2d at 575:

“Finding no threat to the public convenience or fraud in this case, we refuse to pierce the corporate veil at the request of the creator of the veil. To do so would permit a parent company to assert itself as an immune unit if sued by an employee of any of its subsidiaries for independent acts of negligence, and project itself as a separate entity if sued by a member of the general public for the same conduct.”

C. Conclusion

For all of the reasons set forth above, the Motion for Summary Judgment filed by Defendant Carpenter Technology Corporation is **DENIED** in its entirety.

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.