

ORDER

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Objections are **SUSTAINED** and the Defendant/Third Party Plaintiff's Joinder Complaint against Empire Services, Inc. t/a Empire Wrecking is **DISMISSED WITH PREJUDICE**.

MEMORANDUM

Additional Defendant Empire Services, Inc. t/a Empire Wrecking ("Empire") has filed Preliminary Objections to Trico Equipment, Inc. d/b/a Trico Lift's ("Trico") Joinder Complaint. When the Plaintiff-Decedent John R. Martz was involved in a construction accident February 1, 2010, he was an employee of Empire.

The Workers' Compensation Act is the sole and exclusive means of recovery against employers for all injuries or death arising out of accidents which occur during the course of employment. See, 77 P.S.C.A. §481(a). The Superior Court held in Bester v. Essex Crane Rental Corp., 619 A.2d 304 (Pa. Superior Ct. 1993) that the Workers' Compensation Act protects an employer such as Empire from double responsibility, unless the employer expressly waives the protection of the Act.

In this case Trico is relying on the general indemnification language of Paragraph 15 of the Lease Agreement, quoted in its Memorandum:

"Additional Defendant agrees to defend at its own expense, *indemnify* and hold Defendant harmless for any and all damages, losses, claims, costs and expenses incurred by Defendant as a result of any injury to person, life or property caused by the leased property or its operation while in the possession of Additional Defendant or any other person or entity possessing the leased property during the terms of the lease."

That language is similar to the indemnification clause in Szymanski-Gallagher v. Chestnut Realty, 597 A.2d 1225 (Pa. Superior Ct. 1991), which was specifically rejected by the Superior Court en banc in the Bester case, supra.

It appears that Trico's suggestion that the words "person or life" encompass the term "employees" is the same argument made in Szymanski-Gallagher, supra, that "person or thing" created a duty on the employer to indemnify.

In Trico's Supplemental Memorandum, Paragraph 26 of the Lease Agreement is relied on in support of Trico's indemnification argument. This Court does not agree. The issue raised by Empire is narrow. It is **not** whether there is indemnification language in the Lease Agreement. Rather, Empire argues that it is statutorily protected from a third party suit because that immunity has not been waived by express contractual language. Wnek v. Boyle, 96 A.2d 857 (Pa. 1953), a motor vehicle case, is distinguishable.

The Appellate case law is consistent that there must be specific language to establish an intent to indemnify for liability of an employer's own employees. Bethlehem Steel Corporation v. Matx, Inc., 703 A.2d 39 (Pa. Superior Ct. 1997). In Snare v. Ebensburg Power Co., 637 A.2d 296 (Pa. Superior Ct. 1993), the Court commented at 298:

"The language in such contracts must be clear and unequivocal; the parties to the contract must specifically provide that a named employer agrees to indemnify a named third party from liability for the acts of that party's negligence which caused harm to the named employer's employees."

See also, Bianculli v. Turner Construction Co., 640 A.2d 461 (Pa. Superior Ct. 1994). The general indemnification language in the Lease Agreement here is not sufficient, as a matter of law, to permit indemnification for Plaintiff-Decedent-Martz by Empire.

Finally, in Hackman v. Moyer Packing, 621 A.2d 166 (Pa. Superior Ct. 1993), the Court quoted the indemnification agreement with language indicating the employer's specific agreement to indemnify Moyer for liability arising from harm suffered by the employer's employee (Hackman). In that case, there was a specific waiver of the Workers' Compensation Act immunity.

For all of the reasons set for above, the Preliminary Objections of Empire Services Inc. t/a Empire Wrecking are **SUSTAINED**.

BY THE COURT:

FREDERICA A. MASSIAH-JACKSON, J.