

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HUGH G. DENNIS,	§	
	§	No. 317, 2012
	§	
Plaintiff-Below,	§	Court Below: Superior Court of
Appellant,	§	the State of Delaware, in and for
	§	New Castle County
v.	§	
	§	C.A. No. N11C-12-100 FSS
DELAWARE RACING	§	
ASSOCIATION,	§	
	§	
Defendant-Below,	§	
Appellee.	§	

Submitted: December 12, 2012

Decided: December 31, 2012

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 31st day of December 2012, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Hugh G. Dennis, the plaintiff-below (“Dennis”), appeals from two Superior Court orders granting Delaware Racing Association’s (“DRA”) two separate motions for summary judgment on Dennis’ two claims. On appeal, Dennis claims that the trial court erred by granting summary judgment in DRA’s favor. We disagree and affirm.

2. On January 27, 2010, Dennis, an equestrian exercise rider, suffered serious injuries while riding at Delaware Park, a horse racing facility that DRA

owns and operates. At the time of the accident, Dennis was an employee of Deckert Enterprises (“Deckert”), an equestrian riding business that had contracted with DRA for Delaware Park stall space. Deckert did not hold a workers’ compensation policy insuring its employees at the time of Dennis’ injury.¹ According to Dennis, DRA’s internal “rules” mandated that Deckert and any other entity with which DRA contracts must obtain workers’ compensation insurance before they can keep their horses stalled at Delaware Park.

3. In his Superior Court lawsuit seeking damages against DRA, Dennis asserted a tort and a contract claim. His tort claim was that DRA was negligent by “failing to enforce its own rules about requiring workers’ compensation insurance” from Deckert. His contract claim was that DRA’s contract with Deckert required Deckert to obtain workers’ compensation insurance to protect Deckert’s employees. As a Deckert employee, Dennis argued, he was therefore an intended third-party beneficiary of the DRA-Deckert contract, and therefore was entitled to damages from DRA.

4. Dennis cites three DRA publications as evidence that DRA had a “rule” in effect at the time of his injury requiring all of its contracting entities to purchase workers’ compensation insurance before they could keep their horses stalled at Delaware Park. The Rule was allegedly embodied in the 2010 Stall Application,

¹ Because Dennis has settled his claims against Deckert, Deckert is not a party to this appeal.

the Condition Book, and the Stakes Book. Dennis produced no evidence of a written contract between DRA and Deckert, although DRA stipulated for summary judgment purposes that such a contract existed. The Superior Court granted DRA's two motions for summary judgment, each of which corresponded to one of Dennis' two claims. This appeal followed.

5. We review a Superior Court grant of summary judgment *de novo* “to determine whether, viewing the facts in the light most favorable to the nonmoving party, the moving party has demonstrated that there are no material issues of fact in dispute and that the moving party is entitled to judgment as a matter of law.”² On appeal, Dennis claims that: (1) DRA was negligent by failing to enforce its own rules requiring Deckert to obtain workers' compensation insurance; and (2) DRA breached its contractual duties to Dennis, as an intended third-party beneficiary of the DRA-Deckert contract.

6. In a negligence action, the plaintiff must first establish that the defendant owed him a duty.³ Dennis attempts to establish DRA's duty to him by referencing the three above-stated publications. Those publications, however, did not become effective until May 1, 2010—three months after Dennis' accident. The record does not establish that DRA had any other “rule” in place at the time of

² *State Farm Mut. Auto. Ins. Co. v. Patterson*, 7 A.3d 454, 456 (Del. 2010) (internal quotation marks omitted) (quoting *Brown v. United Water Delaware, Inc.*, 3 A.3d 272, 275 (Del. 2010)).

³ *Culver v. Bennett*, 588 A.2d 1094, 1097 (Del. 1991).

Dennis' injury. Dennis has therefore failed to establish that DRA owed him a duty arising in tort.

7. Alternatively, Dennis claims that he was an intended third-party beneficiary of the contract between DRA and Deckert. In *Pettit v. Country Life Homes, Inc.*,⁴ however, this Court held that where an employee of a subcontractor is injured at work, the subcontractor's employee may not collect workers' compensation benefits from the general contractor under a third-party beneficiary theory.⁵ We explained that:

In advancing this [third-party beneficiary] argument, [the employee] ignores the fact that [the subcontractor] is the party that promised to purchase insurance, not [the general contractor]. Assuming [the employee] is an intended third-party beneficiary, his recourse would be against the promisor who failed to fulfill the promised obligation. In this case, that would be [the subcontractor].⁶

By parity of reasoning, even if a valid contract existed between DRA and Deckert, Dennis could only seek damages (measured by applicable workers' compensation benefits) from Deckert, the promisor, and not DRA. The Superior Court did not err by granting DRA's summary judgment motions on Dennis' negligence and third-party beneficiary contract claims.

⁴ 984 A.2d 124, 2009 WL 3530377 (Del. Oct. 30, 2009) (TABLE).

⁵ *Id.*

⁶ *Id.*

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice