

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

SARA LYON AND SEAN LYON	:	
	:	C.A. No: 12C-03-023 (RBY)
_____ Plaintiffs,	:	
	:	
v.	:	
	:	
IN BOCCA AL LUPPO	:	
TRATTORIA, DOUBLE EAGLE	:	
HOLDINGS, INC., LLC.	:	
JOAN MONTELEONE AND	:	
GINA ZUCHERRO-MONTELEONE	:	
	:	
Defendants.	:	

Submitted: July 27, 2012
Decided: September 18, 2012

Upon Consideration of Defendants
Motion for Summary Judgment
GRANTED

ORDER

Heather A. Long, Esq., Kimmel, Carter, Roman & Petlz, P.A., Newark, Delaware for Plaintiffs.

Gregory A. Morris, Esq., Liguori & Morris, Dover, Delaware for Defendants.

Young, J.

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SUMMARY

_____Plaintiffs instituted this action seeking damages for personal injuries Plaintiff Sara Lyon sustained during the course of her employment with Defendants. Plaintiffs received compensation for the injuries under Delaware's workers' compensation laws. Accordingly, they are preempted from pursuing an action for damages. Defendants' motion for summary judgment is **GRANTED**.

FACTS

_____On March 15, 2012, Sara Lyon and Sean Lyon (Plaintiffs) instituted this action against In Bocca Al Lupo Trattoria, Double Eagles Holdings, LLC, Joan Monteleone and Gina Zuccherio-Monteleone (Defendants). Plaintiffs' assert claims rooted in premises liability, negligent supervision and negligent hiring. The claims stem from an August 13, 2010 incident during which Plaintiff Sara Lyon sustained injury in Defendants' restaurant's kitchen. At the time, Plaintiff Sara Lyon was Defendants' employee.

Subsequent to the accident, in 2011, Plaintiffs filed claims for workers' compensation benefits with the Industrial Accident Board. Defendants' posted a \$10,000 bond in trust to cover the claims because Defendants did not carry workers' compensation insurance. Ultimately, the parties settled all of the workers' compensation claims. Plaintiffs received payment from the trust account.

STANDARD OF REVIEW

Summary judgment is appropriate where the record exhibits no genuine issue

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of material fact so that the movant is entitled to judgment as a matter of law.¹ “Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.”² The movant bears the initial burden of establishing that no genuine issue of material fact exists.³ Upon making that showing, the burden shifts to the non-movant to show evidence to the contrary.⁴ When considering a motion for summary judgment, the Court considers the facts in the light most favorable to the non-movant.⁵

DISCUSSION

1. Recovery by Non-Application of 19 *Del. C.* §2374

_____Defendants argue that there is no genuine issue of material fact because Plaintiffs’ personal injury claims are barred due to her having been compensated by workers’ compensation. “Under Delaware law, workers’ compensation provides the sole remedy for employees against the employer when they are injured in the course of their employment. Workers’ compensation preempts any potential tort cause of action that might be brought against an employer by an injured employee.”⁶

¹ *Tedesco v. Harris*, 2006 WL 1817086 (Del. Super. June 15, 2006).

² *Id.*

³ *Ebersole v. Lowengrub*, 54 Del. 463 (Del. 1962).

⁴ *Id.*

⁵ *Tedesco*, 2006 WL 1817086 at *1.

⁶ *Menkes v. Saint Joseph Church*, 2011 WL 1235225, *4 (Del. Super. Mar. 18, 2011) (citing 19 *Del. C.* §2304).

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Plaintiffs present two arguments in opposition. First, Plaintiffs argue that their claims are not barred because they fit an exception to the concept of general exclusivity of recovery created in the workers' compensation's law. Specifically, Plaintiffs argue that 19 *Del. C.* § 2374(e)(3) permits an action at law for damages where an employer fails to comply with Delaware's workers' compensation rules. Plaintiffs argue that Defendants failed to comply with said rules, because they did not carry workers' compensation insurance.

19 *Del. C.* § 2374(e) establishes civil *penalties* that may be levied upon an employer that fails to comply with Delaware's workers' compensation requirements. Relative to a claimant, such as Plaintiff, § 2374(e)(3) provides that, in the event of the failure of an employer to carry workers' compensation insurance, the employer shall be liable to an injured employee *either* for compensation under this chapter *or* in an action at law for damages, at the election of the employee.

In this case, therefore, Plaintiffs had the option of pursuing a remedy at law for damages or a claim for workers' compensation benefits. Plaintiffs claim that they did not pursue workers' compensation relief. Rather, they say, since Defendants did not have workers' compensation insurance, they obtained recovery to their evident satisfaction (i.e.: the settlement of their claims) by virtue of payment made to them from the employer. Plaintiffs read 19 *Del. C.* §2374 to say that compensation for losses obtained in any fashion other than through a workers' compensation policy of insurance cannot be a bar to an action at law for a second compensation for the same claim. In addition to failing to recognize the plethora of means of precluding second recoveries in a civil action, Plaintiffs misread the referenced statements. In its

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description of remedies for claimants, 19 Del. C. §2374 applies only to cases where the employer does not have workers' compensation insurance coverage. In that event, which is to say: presuming that absence to be true, the employee may opt for compensation through the 19 Del. C. §2301 et seq. framework, or may choose to pursue an action at law where certain otherwise available defenses may not be raised. Plaintiffs elected to pursue a remedy rooted in workers' compensation. Accordingly, they are barred from pursuing a second recovery in the instant action.

2. Recovery Against Other Defendants

In the alternative, Plaintiffs' argue that exclusivity should bar their claim against Defendant In Bocca Al Lupo Trattoria only, and not against the remaining Defendants, because the remaining Defendants' were not Plaintiff Sara Lyon's employer. This representation of fact is erroneous. Defendant Double Eagle Holdings, LLC provided the funds with which Plaintiffs were compensated. The complaint states that Plaintiff Sara Lyon "was working for" all Defendants. Moreover, the complaint states that "at all relevant times, the Defendants were acting in an agent/servant capacity for one another." Accordingly, Plaintiffs' alternative argument is without merit.

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CONCLUSION

Defendants' motion for summary judgment is **GRANTED**.

SO ORDERED.

/s/ Robert B. Young
J.

RBV/lmc

oc: Prothonotary

cc: Opinion Distribution
File