The State of New Hampshire

STRAFFORD COUNTY **SUPERIOR COURT**

JILLIAN LENNARTZ

v.

OAK POINT ASSOCIATES, P.A.; HALL SHEET METAL WORKS, INC.;UNIVERSITY OF NEW HAMPSHIRE; AMBIENT TEMPERATURE CORP.

Docket No.: 219-2012-CV-00121

ORDER

The plaintiff, Jillian Lennartz ("Lennartz"), brings this action against the defendants, Oak Point Associates, P.A., Hall Sheet Metal Works, Inc., University of New Hampshire ("UNH"), and Ambient Temperature Corp., seeking damages arising from alleged injuries she claims to have sustained due to inhalation of harmful vapors at a UNH laboratory location, allegedly due to a faulty hood and vent system.

UNH has filed a Motion to Dismiss, contending that Lennartz received, accepted and retained workers' compensation benefits from UNH's carrier, and, as a consequence, is barred, per the immunity provided by RSA 281–A:8, from pursuing the personal injury claims she here seeks to advance against UNH. UNH alternatively seeks dismissal of Lennartz's breach of fiduciary duty claim, contending that no general fiduciary duty exists running from a university to students, and that any such fiduciary duty has been recognized only in the context of sexual harassment claims.

In ruling on a motion to dismiss, the Court must determine whether Lennartz's allegations are "reasonably susceptible of a construction that would permit recovery." Bohan v. Ritzo, 141 N.H. 210, 212 (1996) (quotations and citation omitted). This

requires the Court to scrutinize the facts as pled to decide if the complaint asserts a cause of action. Jay Edwards, Inc. v. Baker, 130 N.H. 41, 44 (1987). In making such a determination, the Court "assume[s] the truth of all well-pleaded facts alleged by the plaintiff and construe[s] all inferences in the light most favorable to the plaintiff." Bohan, 141 N.H. at 213 (quotations and citation omitted). "The plaintiff must, however, plead sufficient facts to form a basis for the cause of action asserted." Mt. Springs Water Co. v. Mt. Lakes Vill. Dist., 126 N.H. 199, 201 (1985) (citation omitted).

Background

The following factual assertions are accepted for purposes of the Motion to Dismiss.

On November 25, 2009, the date of alleged exposure, Lennartz was a UNH doctoral candidate and her program included a combination of course work and laboratory work with the handling and mixing of chemicals. At the pertinent time herein, Lennartz was a fellowship recipient and received a tuition waiver, a stipend, and health insurance. Lennartz was injured through exposure to chlorine gas while doing laboratory work required by her doctoral program under the direction of a UNH professor.

Lennartz received workers' compensation benefits from UNH's carrier, but avers that she may still bring her claims against UNH because she was not an "employee" of UNH and the exclusive remedy of RSA 281-A:8 does not apply. Lennartz also avers, among other things, that even if the workers' compensation bar applies, she may still bring a claim under the "dual capacity" doctrine, because UNH owed her a form of fiduciary duty that is separate from its duty as her employer.

Analysis

I. Workers' Compensation Exclusive Remedy Provision

RSA 281:A-8, I states: "An employee of an employer subject to this chapter shall be conclusively presumed to have accepted the provisions of this chapter and . . . to have waived all rights of action whether at common law or by statute or provided under the laws of any other state or otherwise . . . [a]gainst the employer . . .."

UNH cites Tothill v. Estate of Center, 152 N.H. 389 (2005), to support its position. There, the Supreme Court stated, among other things:

> An employee who seeks workers' compensation, and is granted workers' compensation, has no right to then question whether the employee is entitled to that grant. Such a result would nullify the exclusiveness of the remedy and unravel the workers' compensation scheme. Having both sought and received workers' compensation benefits, Tothill is, therefore, barred from suing [the employer] for negligence.

Id. at 395. Although UNH reads this language, and the whole case, as very supportive of its view that Lennartz, as one who has received, accepted and retained workers' compensation benefits, is barred from pursuing her claims here against UNH, Lennartz argues that her case and Tothill differ.

In Tothill, as Lennartz points out, it was "undisputed that Tothill [was] an employee for purposes of the [Workers' Compensation Law]." Id. at 393. Here, although UNH considered Lennartz to be an "employee" entitled to workers' compensation benefits, Lennartz avers that UNH was incorrect in this assessment of her status. According to Lennartz, the question of whether she is an employee remains properly in dispute.

Lennartz relies on Labonte v. Nat'l. Gypsum Co., 110 N.H. 314 (1970), a case in which a person who was injured in a claimed assault by a co-worker, and who received

workers' compensation from his employer, then sued the employer in negligence. The injured person declared, among other things, that his injury was unrelated to his work but was "the result of a purely personal matter." Id. at 315. The employer, on the other hand, argued, among other things, that the filing and effectuation of "a memorandum of agreement for compensation" with the New Hampshire Department of Labor, as required for workers' compensation under the statute, acted as "res adjudicata or preclusion of remedy," thus barring the subsequent negligence action. Id. at 315-16. The Labonte Court disagreed, stating that:

> [i]f, after notice to the parties and a hearing at which full consideration shall be given to all evidence . . . the Labor Commissioner had determined that [the injured person's] injury was compensable, this determination, in the absence of an appeal, would constitute a bar to his common law action. However, where, as in this case, there has been no such determination of that issue in a proceeding approximating the decisional process of courts, [the injured person] is not precluded from maintaining a common law action if his injury is in fact noncompensable.

Id. (citations and quotations omitted). The Court, however, went on to affirm dismissal of the injured person's case (but not his wife's claim for loss of consortium) because the injury was deemed to be compensable, meaning it resulted from "the conditions and obligations of the employment," rather than a "personal quarrel" unrelated to work. Id. at 316–20 (quotations and citations omitted).

Lennartz argues that the Labonte case is on point. She contends that no form of adversarial proceeding took place to determine her status as an "employee," or a "student," and that merely receiving some workers' compensation benefits does not cause a bar to her case here. See Pl.'s Obj. to Mot. to Dismiss ¶¶ 7, 8.

The Court concludes that Lennartz's mere acceptance and receipt of some workers' compensation does not, without more, allow for the granting of UNH's Motion

to Dismiss. See generally 6-102 Larson's Workers' Compensation Law, § 102.03 (Lexis 2012). It is clear, however, that: "[o]nce a workers' compensation act has become applicable either through compulsion or election, it affords the exclusive remedy for the injury by the employee . . ." Tothill, 152 N.H. at 394 (citation and quotations omitted).

Application through compulsion means that for compensable injuries it is irrelevant whether the employee seeks workers' compensation or not; the statute provides the sole remedy. See 6–100 Larson's Workers' Compensation Law § 100.01 (Lexis 2012) ("Even if the employee has never made application for compensation, the employee's right to sue his or her employer at common law is barred by the existence of the compensation remedy.").

The Court does not read Tothill as holding that an injured person's acceptance of some workers' compensation benefits is enough, by itself, to constitute a bar. There, the Supreme Court was faced with more than just the filing of a memorandum of payment for compensation and the subsequent acceptance of some benefits. Among other things that there occurred in a rather complicated adversarial setting, the injured worker, dealing with a major dispute concerning whether she fit the definition of a "domestic employee" for workers' compensation purposes, had "asserted that she was an employee," had "failed to contest opposing assertions that she was an employee, and, in fact, [had] sought workers' compensation benefits *because* she was an employee." Tothill, 152 N.H. at 395. (emphasis in original). In this context, and though the Supreme Court very much bottomed its decision that Tothill's negligence case was barred on to the undisputed circumstance that "[she] was an employee for the purposes of the Workers' Compensation Law without regard to her acceptance of benefits," it also

underscored and ruled that inasmuch as Tothill had both sought and received workers' compensation she could not then question the grant and was "barred from suing . . . for negligence." Id.

In its present posture, the instant case is not ripe for decision as to whether Lennartz's only remedy is through workers' compensation. Though a memorandum of payment was filed with the Department of Labor on behalf of UNH by its carrier, leading to Lennartz's receipt and acceptance of some workers' compensation benefits, these circumstances, standing alone, (and as previously stated) do not call for a ruling here in UNH's favor. Further, the Court is not able to determine, at this stage of proceedings, whether Lennartz was an "employee" for purposes of the Workers' Compensation Law at the time of claimed injury, with the injury arising out of and occurring during the course of employment. See in this regard Pl.'s Obj. to Mot. to Dismiss, Ex. A (copy of unpublished opinion in Lindsay v. St. Olaf College, 2008 WL 223119 (Minn. App. Ct. 2008), a case which involved somewhat analogous facts and in which the court stated, in affirming the trial court's denial of summary judgment on the applicability of the workers' compensation act, that "the determination of whether a student is an employee . . . requires an evaluation of the purposes and character of the work assigned and performed by that student."); Land v. Workers' Comp. Appeal Bd., 102 Cal. App. 4th 491 (Cal. Ct. App. 2002) (upholding denial of workers' compensation benefits because Land was a student not an employee); Sabol v. Allied Glove Corp., 37 A.3d 1198, 1202 (Pa. Super. Ct. 2011) (under Pennsylvania law, when a Ph.D. candidate performed dual roles of both employee and student, and was allegedly injured [subjected to asbestos exposure] in a laboratory on campus, the Court reversed

the trial court's entry of summary judgment, stating that "a fact-finder should resolve the issue of how much asbestos exposure occurred while [the Ph.D. candidate] was acting in his capacity as a student, rather than as an employee.").

II. Breach of Fiduciary Duty or Elevated Duty Between Lennartz and UNH

Lennartz avers in her Count IV that, even if UNH is deemed her "employer" for purposes of workers' compensation, it remains subject to suit as it owed her a form of fiduciary duty "to act in good faith and with due regard for her interests and physical well-being," inasmuch as she was "a post-secondary graduate student attending UNH . . . dependent on UNH for her education." See Pl.'s Partially Assented Mot. to Add UNH as a Party Defendant ¶ 26. She alleges that UNH violated "its fiduciary obligations" to her in failing to exercise reasonable care in the maintenance of its research facilities such that she could engage in her academic pursuits without unreasonable risk of harm. Id. She claims that her recovery for this breach of "fiduciary obligations" is actionable under the dual capacity doctrine, regardless of the applicability of the workers' compensation bar. Id.

"The dual capacity doctrine permits an employer, normally shielded from tort liability by the exclusive remedy principle, to become liable in tort to [its] own employee if [it] acts, in addition to [its] capacity as an employer, in a second capacity conferring on [it] obligations independent of those imposed on [it] as employer." Robbins v. Seekamp, 122 N.H. 318, 321 (1982) (citation omitted). Lennartz claims that a fiduciary relationship between her and UNH constitutes such a "second capacity." See Pl.'s Partially Assented Mot. to Add UNH as a Party Defendant ¶ 26.

The Court need not deal with this "fiduciary duty" claim beyond concluding, as explained below, that no form of fiduciary relationship may be drawn from Lennartz's pleadings, and that, as a consequence, no "second capacity" by virtue of any such form of relationship is presented under which UNH may be deemed to have acted.[1]

"A fiduciary relationship has been defined as a comprehensive term and exists wherever influence has been acquired and abused or confidence has been reposed and betrayed." Schneider v. Plymouth State College, 144 N.H. 458, 462 (1999) (quotations and citation omitted).

In Schneider, the New Hampshire Supreme Court recognized a fiduciary relationship between a college and a student, to the extent of "giv[ing] rise to a fiduciary duty . . . to create an environment in which [the student] could pursue her education free from sexual harassment by faculty members." Id. at 463 (1999). In recognizing such a fiduciary duty "in the context of sexual harassment by faculty members," the Court highlighted the students' "vulnerable situation because [of the] the power differential between faculty and students . . .." Id. at 463 (quotations and citations omitted).

Lennartz relies heavily on Schneider in arguing that a fiduciary duty of some form or nature should be deemed to extend to her case. While she concedes that Schneider addressed sexual harassment, she contends that the Schneider Court recognized a "unique" relationship between a university and student which, she argues, should be seen as giving rise to a broader fiduciary or elevated duty beyond sexual harassment claims, and one which would cover the present case. See Pl.'s Obj. to UNH's Mot. to

[1] Lennartz also advances a claim against UNH based on "nondelegable duty as the owner and operator of" the laboratory where she was allegedly injured. See Pl.'s Partially Assented Mot. to add UNH as a Party Defendant ¶ 27. UNH has not sought dismissal of this claim, except in the context of its workers' compensation bar contentions.

Dismiss ¶ 15. Lennartz highlights that, even if she is deemed to have been employed by UNH for workers' compensation purposes, she "and UNH shared a legal relationship (educator/student) distinct from their legal relationship of employer/employee . . . ." Id., ¶ 17.

The Court is not persuaded. The Schneider Court made clear that its holding in regard to fiduciary duty concerned sexual harassment and the vulnerable position of students vis-à-vis faculty in that context. This case involves no such allegations or concerns, but core negligence assertions. Other courts have not read Schneider in the manner Lennartz suggests. See generally Franchi v. New Hampton School, 656 F.Supp. 2d 252, 261-265. (D.N.H. 2009); see also Gonzalez v. Univ. Sys. of N. H., 2005 WL 530806 at *18-19 (Conn. Super. Ct. 2005).

Consistent with the above, the Court **GRANTS** UNH's Motion to Dismiss only insofar as it **DISMISSES** Lennartz's "fiduciary duty" claim; otherwise, the Motion is **DENIED**.

So Ordered.

January 11, 2013

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Date

John M. Lewis
Presiding Justice